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WHAT is here to be discussed concretely is the village community. This has already been considered, by actual count, in more than a thousand books and essays and written about under titles more seemly and more modest. Yet I venture to tax the patience of the reader with the old story once more; not even with the story, because all I am offering here is an interpretation.

I ask only this question: Can the reader tell me *why* the village community was so prevalent in Europe, regardless of race and clime? The reader, if he belong to one school, will say that the village community is a survival of an early Teutonic or even of a universal ancient custom. If he belong to another school, he will cautiously answer that wherever we meet this institution in the past it is invariably in connection with the manorial system. Thus the thousand contributions to the subject do not answer the question *why*. Those of one school practically say that it existed but that they do not know why; those of the other school intimate that the lords of the manor introduced it but that they do not know why. Worse yet, not only has the question *why* not been answered; it has not even been asked.

Hence there is after all a justification for one more essay on the subject, in which the simple question is asked and a plain answer given.

This is an interpretation, not a story, and it is possible that some kindly reader may come to the conclusion that, after all, the writer is more interested in a problem of which the village community is but a manifestation,—the problem of the life and

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death of the land and of the peoples thereon possibly. But an economist may be, and a farmer must be, concrete. Let us therefore talk about the village community.

First of all, what have the discussions been about? The controversy covers several problems: did or did not the early Teutons have a "Mark Association"; is or is not the village community of to-day a survival of a system when all land was universally held in common ownership; do we find the *Mark Genossenschaft*, the community of free Mark associates, in England, Scandinavia and among the Slavs; is or is not the village community in Germany, Russia, France, England and elsewhere, after all, but a product of serfdom and the manorial system; is or is not the Roman *villa* responsible for the manorial organization of western Europe?

These are the main problems that have been discussed for many decades under the general heading of "village community." The controversies have been too often acrimonious. While they have unquestionably added to the sum total of our knowledge about miscellaneous historical subjects of importance, the real problem has been obscured rather than illuminated by the wealth of historical data.

Let us see what is the real problem that a village community presents. There are thousands of old villages in Europe where the holdings of the individual peasants have never been inclosed. The holdings of one are intermixed with the holdings of his neighbors in the open fields. Let us examine such a village.

First of all, we find all the homesteads grouped together. In some localities they form one long street; in others, two streets; in still others, they are laid out in a semi-circle. Near the homesteads are the barns, stables, hovels, vegetable gardens and a few fruit trees, but never the field that belongs to the individual farmer.

The farming land presents a curious sight. It looks like a patchwork quilt. You see a number of land areas, of flats, of plots, as a rule square or oblong in shape, each of them divided into very numerous, narrow strips of land. Sometimes the three fields of the village form three quite uniform flats, subdivided into numerous strips, long and narrow, running

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in the same direction; but oftener you find that each of the three fields is made up of many such flats, each of them subdivided into strips or ribbons of land. These strips belong to different owners, but they are not fenced. They are separated from each other by balks of turf, or unploughed land. Strips in some patches are, at times, so narrow that one wonders how they could be cultivated.

The individual peasant may own ten, twenty, or more strips in each of the three farming fields, but the strips of the individual farmer, even in the same field, do not adjoin each other. They are at times quite a distance apart. They are the farmer's individual property which he has inherited and which he may sell. But in the use of his property he is necessarily restricted. First of all he is restricted in the rotation of crops, and in the type of tillage. The third field is the fallow field on which the cattle of all the villagers pasture. The cattle are also pastured on the stubble as soon as the harvest is removed. Hence it becomes necessary for all the members of the community not only to sow the same crop on the same field, but to sow at the same time and to harvest at the same time.

Besides the cultivated fields the village has as a rule some waste that serves as a permanent pasture, woods and a meadow. None of this is subdivided or fenced. It is used in common, with restrictions varying in different localities. As a rule, with a definite acreage in the cultivated fields goes a proportionate and quite definite acreage in the meadows. Let us say that a certain farmer owns two acres of meadow land. It is left, however, to a yearly drawing of lots to determine where his two acres are to be located. He will get neither more nor less than the two acres to which he has a title, but the location of these two acres may vary from year to year. As soon as the meadow hay is mowed, the entire meadow is thrown open for common pasturage of all members of the village community. Sometimes all varieties of cattle are allowed there; oftener sheep will be restricted to the waste and fallow fields or to a special part of the meadow.

This is the organization of the village community as we find it still in numberless localities of northern, western, and south-

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eastern Europe, an institution that has given rise to so prodigious a literature.

It is not an idle problem, either. Agriculture was until recently the sole basis of state and society. It is, and will remain, of paramount significance. Anything so fundamentally characteristic as is the village community of European farming is of fundamental economic and historical importance. The problem of the village community is not a new one. The enclosure of the commons shook the very foundations of sixteenth-century England. Yet curiously enough it became a scientific and bookish problem only in the nineteenth century. This bookish spirit is nowhere so well expressed as in Wagner's rejoinder to Faust:

> I often had myself fantastic notions,
> But never have I felt the like emotions.
> 'Tis tiresome on green woods and fields to look,
> The bird's wing crave I not in slightest measure.
> How otherwise bears us the mental pleasure
> From page to page, from book to book!
> Then grow the winter nights so lovely fair,
> A warm and blissful life all limbs pervading,
> And oh! unroll'st thou e'en an ancient parchment rare,
> All Heaven descends to thee that knows no fading.

Tiresome as it may be to look at green woods and fields, let us do so for a change. If we should take with us a plain American farmer and show him a European village community he could not possibly believe his eyes. First of all he would observe the homestead with the farm buildings all clustered together, far away from the farming land. This would naturally look to him just as if an American farming community should live in a city, keeping there the horses, fodder *etc.*, but going out every morning to farm somewhere in the country. The American farmer would hardly know what to think about such a situation. True, he knows of wealthy farmers who live in the town in the winter, or even go visiting or traveling in the winter, but they can do so because during the planting and harvesting season they are on their jobs without wasting a minute of their own or of their horses' time. What are we to tell this plain American farmer? We consult all the books

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and find that they are unanimous on this point. In fact it is the only point on which the various writers are unanimous. The European peasant lives in villages *for protection*. Protection of what? The farm land, the crops, the cattle on the pastures? Of course not. They live in villages for their own protection, for the protection of themselves. Shall we give this answer to the sturdy son of an American pioneer? His comment could easily be guessed, as well as his praise and thanksgiving for having come from a different stock. But that is where our farmer is quite mistaken. His stock, whether English or Irish, German or Scandinavian, Magyar or Slav, have all lived in precisely such villages in the old country.

But, curiously, if we consult documentary evidence we find that early agricultural pioneers and settlers in newly colonized European territory, where they needed "protection" the most, lived as a matter of fact not in villages but on single farms. Their "villages" consisted of single homesteads, but as the population grew even these communities often developed the same uniform type as the European village, with all the homesteads huddled together. Instead, however, of consulting thousands of documents let us try another method. Let us give our poor ancestors the benefit of the doubt and assume that they had some common sense. If they so universally persisted in holding to an arrangement so obviously and seriously inconvenient there must have been some good reason for it. When we proceed on this assumption, we almost invariably find that a "good reason" is a plain, technical and economic necessity. So it is in the case of the European village. Where would you locate the farmhouses, if you do not locate them together in a special area? Would you put the house and garden on the farm land? If so, to which of the farmer's numerous and widely scattered strips and ribbons of land will you attach his homestead? And if his house is securely attached to one of his strips, will he not be just as far away from all his other strips as when he lives in the village? Furthermore, if his homestead and garden were located on one of his strips in one of the three farming fields, he will find himself every third year on a fallow field, where the cattle of all his neighbors are

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grazing, and perhaps miles away from the strips he is cultivating in the other two fields; besides, his buildings and his garden will interfere every year with pasturing on the stubble.

Thus the village community and the possession of isolated, intermixed strips of land necessitates the living together outside of the area given over to tillage, and thus there is formed a village street.

Now let us turn to the farming land.

The reader knows of course that in no occupation is the time element of so decisive importance as in farming. If the land is not ploughed and if the crop is not planted at the right time, the partial loss, and at times the total ruin, of a crop may be confidently expected. This is particularly the case on heavy clay land, which drains very slowly. If you do not happen to plough the land and plant your crop at an early favorable moment, a single rain may delay your work for some time, and just as the ground is about fit for work another rain will emphasize the point that farming brooks no delay. Yet if the farmer should be driven in despair to plough and to sow in the wet, he will have good cause to remember one of Tusser's "Five Hundred Points of Good Husbandry,"—that "who soweth in rain he shall reap it with tears."

Thus farming is in a sense a race with the season, with the weather as a constantly menacing and incalculable element. That is why from time immemorial the farming season has taxed the effort of men and beasts to the very limit of their physical endurance.

Now let us have another look at the village community.

Let us take an English example. South Luffenham in Rutland was not inclosed until 1879. It had 1074 acres, divided into 1238 pieces or strips, among 22 owners. Think of a farmer who has to attend 40-odd acres in nearly 60 scattered pieces, dotting a surface of over 1000 acres! Think of the waste of time and effort in cultivating such land strips! But this happens to be a small village community. Imagine a large community, where the acreage of the individual farmer is scattered in intermixed strips over an area of many thousand acres! Why should humanity have so handicapped itself intentionally?

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It is a survival, you will say. Quite true. One finds the situation in the Middle Ages whether the farmer was freeman or serf. But does the word "survival" in this particular case explain why there was a survival? Anything that is serviceable or even indifferent may survive. But is it sensible to assume that a most serious and burdensome handicap can survive without sufficient reason for surviving? But perhaps you do not belong to the school which believes that the village community is a survival from the dawn of civilization, perhaps you accept the only possible alternative, that the village community is a product of the manorial system.

It is clear that the intermixed strips of land result in waste of energy of both men and beasts. If the man is a serf, the loss of his time and the impairment of his efficiency is in the last analysis the loss of the lord. The serf must be provided with a living from the product of his labor and only the surplus over this goes to the landlord. The lack of productivity is therefore the landlord's loss. Why then should the landlords have introduced such a system in England as well as in Roumania, in Germany as well as in Russia, in France as well as in Hungary? How can such uniformity be explained? Manorial systems varied from age to age and from locality to locality. Here they commuted services to money rent, there the landlord would not even reserve a domain but left everything to the peasants for an "obrok," a heavy rental paid in produce. They have varied the internal workings of the village community. In Russia, for instance, they introduced periodical redivisions of the land-allotments of the serfs. The serfs there did not have a virgate-system. Their holdings varied and were dependent upon the fluctuations in the size of the individual serf families, upon the increase of the entire serf population of the manor, and upon the acreage of the manor that could be set aside for the serfs. One could go not only from country to country but from county to county, yes even from manor to manor, and write a story of greater or lesser variations in agrarian relationships, but the underlying basis was the same village community! There were times and localities in which the serf had no claims or rights sanctioned by custom, where

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the landlord's arbitrary power could not be disputed; and yet the village community was there! How then is the village community to be explained?

We have seen that the village community was a time-robbing and in many other respects a handicapping institution. Already in the sixteenth century Fitzherbert and Tusser were heaping curses upon the village community. Discussing this system Tusser says:

> What drudgerie more anywhere?
> Lesse good thereof where can you tell?

Why then did such an institution persist in surviving? There must have been some circumstance either of a compelling or of a compensating nature. Where are we to look for it if not in the prevailing methods of farming, the treatment of the soil, and the crops that were cultivated?

There are some very suggestive lines in Lucretius. At the end of the second book where he discourses about the world's growing old, he says about the earth:

> She brought forth Herbs, which now the feeble Soil
> Can scarce afford to all our pain and toil.
> We labour, sweat, and yet by all this strife
> Can scarce get Corn and Wine enough for life.
> Our Men and Oxen groan, and never cease,
> So fast our labours grow, our Fruits decrease.
> Nay oft the Farmers with a sigh complain
> That they have labour'd all the year in vain. . .

But did not people know about improving the soil with manure, and making it productive? Yes, indeed, they knew all about it and practiced manuring. But to have manure for the improvement of the soil one has to keep cattle. Did they not keep cattle? Yes, indeed, they kept cattle; but the question is, could the individual farmer keep on his land *enough* cattle to improve or to maintain the productivity of his entire farm? With the cattle kept upon his entire farm he could undoubtedly have fertilizer enough to maintain the productivity of at least a certain portion, but if he should apply manure to a part only, the rest of the land would rapidly deteriorate. If he chose rather to distribute an insufficient amount over his entire farm,

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the whole would gradually be depleted of nitrogen, humus *etc.*, and steadily lose in productivity.

Let us examine the mediæval situation.

The field crops were: first year, wheat or rye; second, oats or barley or beans; third, fallow. Where in this schedule does grass-seeding come and where are the hayfields? *There were none.* The economist who knows so much about the industrial revolution has overlooked another revolution that is of fully as great importance, *a revolution that fundamentally changed the basis of agriculture, that abolished the law of diminishing returns as expressed by Lucretius, and as later (in its original version) discovered by the economists just at the time when it ceased to be true. This great revolution was the introduction of grass-seed and of the "great trefoils," the various clovers, including later on Lucerne or alfalfa.*

There were no hayfields, therefore, before the latter half of the seventeenth century. How then could they keep cattle? They had straw and meadow grass. Meadow grass could grow only in very definite places on low and moist land which lay as a rule along the course of a stream. This gave the meadow a monopolistic value, which it lost after the introduction of grass and clover in the rotation of crops. That explains why we find in Thorold Roger's work that farming land in the last six centuries has increased in value sixty times, and meadow land but twelve times. It simply means that six centuries ago meadow land was, in comparison with land under tillage, relatively five times as valuable as it is to-day; and it further emphasizes how indispensable a little bit of meadow was to a farm.

The meadow was used first of all for mowing, and after the hay crop was gathered it was used for pasturage. The right of pasturage was as a rule limited to the number of cattle that the commoner could keep through the winter. It is the German *Ueberwinterungsmassstab* which we find prevailing in England and elsewhere. There was no necessity for stinting the common pasturage any more definitely. The stern sway of the winter scarcity attended to that. The quantity of meadow hay gathered was a mere trifle, because the proportion of meadow land to the tillage fields was slight. So, for instance, in Hew-

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sted, Suffolk, in 1285 on seven manors together that proportion was but 1 to 24.

We must remember that even turnips, which were known as garden roots to Tusser, were not introduced as a field crop before the end of the seventeenth century. Thus the wintering of cattle was a most precarious enterprise. Only an extremely limited number of cattle could be kept barely alive through the winter. The value of cows as milk producers was slight, even in the summer; in the winter it was trifling. Hence the saying:

> A swine doth sooner than a cowe
> Bring an ox to the plough.

Because of scarcity of milk in the winter, the farmer aimed, as a rule, to have his cows fresh late in the fall; yet four-fifths of the total annual yield of milk was in the months from April to September, when the cows were on pasture. But even then Walter of Henley, the thirteenth-century bailiff, who shows a distinct tendency to exaggerate rather than to underestimate, expects but 3½ lbs. of butter from 3 cows in one week. Only a good-for-nothing farmer will today keep a cow that is not doing better than Walter's three cows put together. But on the other hand, nothing could be expected from cows kept during the winter almost entirely on straw and tree loppings. Even straw was scarce, because of the exhaustion of the soil.[1] Barn manure was therefore obviously produced in inadequate quantities. The impossibility of getting a sufficient amount of manure for the fields is adequately indicated by the miserable pettiness of English manorial regulations, which required the sheep of the commoners to be folded on the domain of the lord.

It is not within our province to go into agrotechnical details and to describe what the mediæval farmer knew but seldom practiced, for lack of time and because of poor means of com-

[1] In the years 1243–8 the average yield of wheat at Combe, Oxfordshire, was 5 bu. per acre, of barley a little over 5, oats 7. The Pipe Roll of the Bishopric of Winchester gives an average yield of wheat over a large area in 1298–9 at 4.3 bushels per acre. Curtler, Short History of English Agriculture, p. 33.

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munication, in the way of liming sour clay ground *etc.* Plant production is determined by that one of the necessary elements that is available in the least quantity. It is a matter of record that the mediæval farmer had not enough and could not have quite enough manure to *maintain* the productivity of the soil. To *improve* its productivity was out of the question.

If any good farmer should today take up a worn-out farm, which still has some fair fields, but others that have grown wild, and still others that are bare, washed and gullied, he should be able to make all the fields look alike in a very few years. As fast as fodder can be produced stock will be added, the poor lands heavily manured, farmed around and turned perhaps into an alfalfa field that will rejuvenate the soil.

Compare again the sentiment of Lucretius, "So fast our labours grow, the fruits decrease," with a statement in a recent Bulletin of the U. S. Department of Agriculture about the introduction of sweet clover—*Melolitus alba*—in Kentucky.

> A decade ago many farms were coming to be abandoned, owing to their low productive capacity. Many of the fields contained gullies, which washed, making the farms even less valuable. Sweet clover was introduced as a bee plant in some of the waste places in this section and proved so efficient as a soil-improver that it has been largely utilized on a great many farms in this section. . . . As a result of the introduction of sweet clover many of these farms are no longer abandoned but are producing satisfactory incomes for those who are working them. The fields are utilized as pastures and for hay while the soil is being built up and the gullies stopped from washing. When the process of natural reclamation has gone far enough the ground is plowed and put into corn.[1]

It is only for the sake of the concrete example given in the *Bulletin*, picked up by chance, that I mention sweet clover, which is, as a matter of fact, an inferior fodder plant and far inferior to alfalfa as a soil renovator. It only shows that improvement of poor soil can be and is undertaken as a matter of course and of daily routine by every prudent farmer in modern times. The attitude towards a variety of soils of different

[1] U. S. Dept. of Agriculture Bulletin, 485, pp. 34-35.

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qualities is quite different in modern times from what it used to be. In the middle ages, or rather in the dark ages of agriculture, *the state in which the land was found was by and large the upper limit of its productive capacity. It might deteriorate, it was likely to deteriorate, but it was not likely to be improved.* Let us see what is the result of such an attitude.

If two of us chance to be joint heirs to a two-hundred-acre farm containing fields and patches of ever so many different qualities, what are we likely to do? We will divide it in two more or less even parts, and call it fair. A sense of justice may perhaps at times suggest dividing the farm unevenly, so as to compensate poorer quality with larger quantity. I have before me some documents of the past which show us that this was not the way an equitable division of an ancestral farm was carried through.

Let us go to a region where the existence of a village community was out of the question. It is in the northernmost Russia.[1] The settlements there were single isolated farms (German, *Einzelhof*, Latin, *Mansus*). They called these farms "villages." Later on, when they actually had villages with several farms in each, they would still call their farms their "village" situated in village so and so. So, for instance, in a certain district which in 1651 numbered 17 villages, eight of these villages still consisted of one farm each, five of two farms, one of three, three of four farms.

The farms were private property, which could be bought and sold, inherited, mortgaged or disposed of by will and testament. It is important to observe what occurs when they are divided among heirs, when the "village" that consisted of one farm becomes a village of two, three or more farms. Both wills and tax-books contain complete descriptions of the farm lands. And what do we find there? Was a farm when divided between two heirs divided into two parts? Not at all. Here is an example: "Village" Novinki (Newlands) divided into

[1] Detailed information, documents and authorities are given in the first few chapters of my book, Die Feldgemeinschaft in Russland, Jena, 1898. A mass of facts and information is there, but I passed there the real problem without ever noticing it.

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ten different plots, each of these plots divided evenly between the two heirs. Another farm (Village Towra) is divided according to quality into twenty-two such plots, and each of these plots into two shares.

I need hardly point out that the moment the land strips of one owner are intermixed with the land strips of his neighbors, we have before us a village community. One could not have a right of way to the various strips, nor pasture on them when they are lying fallow or in stubble, without a uniform—which means compulsory—rotation of crops.

The principle of equity that prompted such a division of inherited property is obvious. Would some eastern tribesman who left behind him four sons, four camels, four horses, four sheep and four dogs, leave to one of his sons four camels and to another four dogs? Or are his heirs likely to receive, share and share alike, the different kinds of property left by their father? Sufficient reason has been given for showing why in the dark ages of agriculture a meadow was altogether a different type of property from arable field, and why under the agrotechnical conditions then prevailing arable fields of different quality were considered a different and a *permanently* different kind of property, equitably divisible only in strips.

A small garden plot could be improved, but poor farming land had no chance of betterment. If its condition altered, it would only be for the worse. Under these circumstances the equitable division of a farm made up of pieces of land of different qualities led inevitably to the strip system.

Does the manorial system present to us a situation so vastly different? Whether we find serfs or customary tenants, whether the services are commuted or not, the obligations resting on those who were tilling the ground were as a rule uniform. One serf was required to perform the same services as another. If the services were commuted the rents and fines were as a rule uniform, a uniformity sanctioned by custom if not by law. Under these circumstances it was obvious that serfs and tenants respectively had to be provided with land of equal value.

Under agricultural conditions as they existed there was no way of getting around or of ignoring the different qualities of

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soil. It was like mining: some soil was pay dirt, other soil was not. Soil could not be improved nor could hayfields be created, as we may create them today by throwing broadcast anywhere we please some seeds of timothy or clover. They were necessarily located in a certain and given place near the brook. Equitable distribution meant access to a share in the meadow, meant a division of fields into strips that went through good and bad, dry and wet soil, with rights of pasturage, of mast and firewood *etc.*—meant, in short, a village community.

Was the village community therefore necessary and inevitable, in spite of all its inherent annoyances, which Tusser characterized as "too much to be borne?" It is an idle question. The village community was dictated neither by fate nor by fetich. There were for all we know local conditions that did not favor the origin or spread of the village community, but we do know and understand the situation which suggested the village community as the sole prevailing method of equitable distribution. It is no more a peculiarity of the Slav and Teuton or the Aryan race in general, than are clay and sand, stony hills and rich meadows peculiarities of the "*Christlich Germanische Cultur.*" Nor should too much stress be laid on the "equitable" side of distribution. If large estates were operated by slaves fed by the master or by free laborers paid wages in money or in produce, there would have been no village community under the manorial system. But at a given time, under the prevailing conditions, it was found more convenient to let labor maintain itself. For that purpose land had to be set aside for the laborers and then indeed the question of equitable distribution of that land had to arise. The solution was the village community.

The situation was similar when small heirship properties required equitable division. Some historians and sociologists find peculiar inner satisfaction whenever evidence shows that drawing of lots was resorted to. The drawing of lots is to them a character certificate of the "primitiveness" of the institution, it proves to them that the village community is a "survival" from the times when all land whether under tillage or not was held in common by the free associates of the "mark," or its English, Irish, Russian, Indian *etc.*, equivalent.

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Other scholars, while acknowledging the reallotment of meadow land, frown severely at any possible allotment of arable land. But they are wrong. Suppose four heirs inherit four seemingly equally good horses, but two of the heirs seem both to have a strong predilection for the same horse. Will they be doomed to serve as exhibits in the survival gallery if they should match pennies for the possession of the horse in question? Contention is never profitable and drawing lots for land strips is as good a way of avoiding difficulties as any. Certainly it is a survival, but so is common sense. For the custom of a *periodical* reallotment of land under tillage, only Russia can be pointed to with assurance. There reallotment was readjustment, because the Russian manorial system did not grant to each peasant family a "virgate" or "hufe" or a certain customary unit of land for customary services or rents, but divided the entire manor or part thereof among the peasant families in proportion to the working capacity of these respective families. Therefore, as the working capacity of the individual families increased, the land of the manor had to be redivided and the individual family holdings proportionately readjusted. Such is the simple explanation of periodical reallotment. The practice, moreover, is one of late origin. Among some of the crown peasants it was as a matter of fact introduced as late as 1830–1840, and introduced practically by force, in spite of the bitter opposition of the landholding peasantry.

I know of places in northern Russia where in the seventeenth century, land-strips, though intermixed and under the usual restrictions of a village community, but in private ownership, were seemingly redivided among the several owners. But this was because of disputes over the original division, due, as a rule, to faulty surveying. They had no trained surveyors with modern instruments. When such contentions became a nuisance, the contending parties as a rule signed a document in which they expressed complete satisfaction with their strips and boundaries and agreed for themselves, their heirs and assignees, never to demand another redivision or adjustment.

The yearly reallotment of meadow land was a very widespread custom in Europe. As a rule the commoner owned a definite

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amount of the meadow, let us say an acre, or two acres, as the case might be. His acreage in the meadow was always proportionate to his acreage under tillage, but just which specific acreage of the meadow, which plot of the meadow, he was to mow in the given year was left to lot. We know that in the absence of herbage and clover, meadow land was of the highest value. But since, after mowing, it was used for common pasture, permanent fences of individual meadow plots were out of the question. Furthermore, permanent ownership of a specific portion of the meadow had other difficulties. The site of such a meadow we can easily imagine. It was in a valley near a stream. The land as a rule was made land, which had washed down from the hills or higher grounds. Every one knows how wayward a meadow stream is. It is prone to wander from year to year; here it abandons its course, for reasons entirely of its own choosing; there it makes a nice little lagoon, or playfully deposits some very fine gravel on what might have been good meadow grass. Every few years such a stream is doing some surveying entirely of its own. It will take a few rods of land from one farmer by running through his land and give a few rods to another farmer by adding to his land the course that it abandoned. When the meadow portions are extremely small as well as extremely precious, a yearly reallotment of the meadow acreage suggests itself as a matter of equity as well as of common sense.

The introduction of grass seed and clovers marked the end of the dark ages of agriculture. It is the greatest of revolutions, the revolution against the supreme law, the law of the land, the law of diminishing returns and of soil exhaustion.

Go to the ruins of ancient and rich civilizations in Asia Minor, Northern Africa or elsewhere. Look at the unpeopled valleys, at the dead and buried cities, and you can decipher there the promise and the prophecy that the law of soil exhaustion held in store for all of us. It is but the story of an abandoned farm on a gigantic scale. Depleted of humus by constant cropping, land could no longer reward labor and support life; so the people abandoned it. Deserted, it became a desert; the light soil was washed by the rain and blown around by shifting winds.

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Only with the introduction of grass seeding did it become possible to keep a sufficient amount of stock not only to maintain the fertility of the soil but steadily to improve it. The soil instead of being taxed year after year under the heavy strain of grain crops, was being renovated by the legumes that gathered nitrogen from the air and stored it on tubercles attached to their roots. The deep roots of the clover penetrated the soil, that no plough ever touched. Legumes like alfalfa, producing pound by pound more nutritious fodder than did meadow grass, produced acre by acre two and three times the amount. And when such a field was turned under to make place for a grain crop, the deep and heavy sod, the mass of decaying roots, offered the farmer "virgin" soil, where previously even five bushels of wheat could not be gathered. The tale is a simple one, and it is told.

In the historical controversy over the village community, the real problem was not touched upon. Deeds and codices were closely examined, but what one could lay his hands upon remained unnoticed. The village exists, the intermixed strips exist, the commons exist. The problem therefore was first of all—what is the village community, and secondly, why is it? The question how it developed would then have answered itself. But instead of this search for an explanation we find a quest for the character of the *prototype* of the present village community. This prototype was believed to have been found in an association of freemen that held all land in common, whether arable or not. With the discovery of this prototype, the real problem, *i. e.*, the explanation of the intermixed strips, with resulting compulsory rotation of crops and common pasturage —which constitute a village community—was lost sight of.

Fustel de Coulanges was merciless in his criticism of the documentary evidence submitted by Maurer and others of his school. But just as Maurer failed to see that his very documents prove personal and not common ownership, so did Fustel de Coulanges fail to see anything but private estates in the personally owned strips that were obviously within the boundaries and under the restrictions of a village community. The mediæval expressions for the word boundaries are *marcha*, *marca*,

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finis, or *terminus* (the Bavarian law says *terminus id est marca*). Fustel de Coulanges quotes: "*dono portionem meam quae est in marca Odradesheim*" and tells us later on: "In the examples given by Maurer, I recognize the existence of the Mark, but a mark which was the same thing as a *villa*, that is a private estate."[1] To my way of thinking one's *portio* within a *marca* looks like private ownership within the boundaries of a village community named *Odradesheim*.

If the village community is strange or peculiar among freemen, it is if anything even stranger among serfs, where the landlord could make any arrangement that may have pleased him. Yet this, Fustel de Coulanges entirely overlooks when he sees nothing but a private estate belonging to a monastery in a quotation of his which unquestionably indicates a manorial village community. "—*rustici ecclesiae pro quantitate et limitibus contenderent. Ego Hermannus abbas . . . compromissum fuit ut maximus campus per funiculos mensuraretur et cuilibet hubae 12 jugera deputarentur . . . in totidem partes secundus campus et tertius divideretur. . . . Inchoata est ista divisio per Alvinum monachum scribentem et fratem Bertholdum prepositum et Rudolfum officialem cum funiculis mensurantes.*"[2] How can several *rustici* have strips in the three fields, without having their land intermixed, hence, without having common pasture on the fallow and stubble and therefore compulsory rotation of crops? Of course Fustel de Coulanges is right in saying that the document does not tell us what Maurer supposed, but indicates rather "a division among tenants carried on by the proprietor."[3] But it tells us quite enough to forget Maurer and pay some attention to the character of the farming indicated by the document. Such quotations, which Maurer misunderstood as common ownership and Fustel de Coulanges misunderstood as private unrestricted ownership, could be found on page after page. So, on the next page: "Another less rich can only give a *huba, but he gives at the same time the portion of the forest to which his huba has a right*," or in the note on

[1] Fustel de Coulanges, The Origin of Property in Land, translated by Margaret Ashley, with an introductory chapter by W. J. Ashley. London, 1891, p. 35.

[2] *Ibid.* p. 41. [3] *Ibid.* p. 42.

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the same page (43): "I will explain elsewhere the meaning of *portio*. All I need say at present is that this word, which occurs more than three hundred times in our authorities, always means a part belonging to an owner. A *portio* is spoken of as *sold, bequeathed and given*." Three hundred land transactions are recorded. The land was sold, bequeathed or given away. The land was personally owned. There is no question about that. But was the use of the land restricted or unrestricted? If unrestricted, why are the respective properties in 300 different transactions characterized and legally described not as independent units but as *parts of units?*

I feel very ungrateful in criticizing Fustel de Coulanges. I honor his name and appreciate deeply the work he has done. And after all I am criticizing him, not for what he has done, but for what he failed to do, which is probably unjust.

I must apologize for one other statement. I have emphasized several times that the real problem has been entirely overlooked. This is not quite true, for W. J. Ashley saw the problem clearly. In his introductory chapter to Fustel de Coulanges's book, as early as 1891, he wrote:

> In the mediæval manor there were two elements, the *seigneurial*—the relations of the tenants to the lord; and the *communal*—the relations of the tenants to one another. The mark theory taught that the seigneurial was grafted on to the communal. The value of the work of M. Fustel de Coulanges and Mr. Seebohm is in showing that we cannot find a time when the seigneurial element was absent; and also in pointing to reasons, in my opinion conclusive, for connecting that element with the Roman villa. *But the communal element is still an unsolved mystery*.[1]

It is the solution of this mystery that is here submitted to the reader.

VLADIMIR G. SIMKHOVITCH.

[1] Fustel de Coulanges, *op. cit.*, p. xiii.

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Specimen Surveys

of

Two Village Communities

Reproduced from August Meitzen's Siedelung und Agrarwesen der Westgermanen und Ostergermanen, der Kelten, Römer, Finnen und Slawen. Atlas to Volume III. (Berlin, 1895. Verlag von Wilhelm Hertz).

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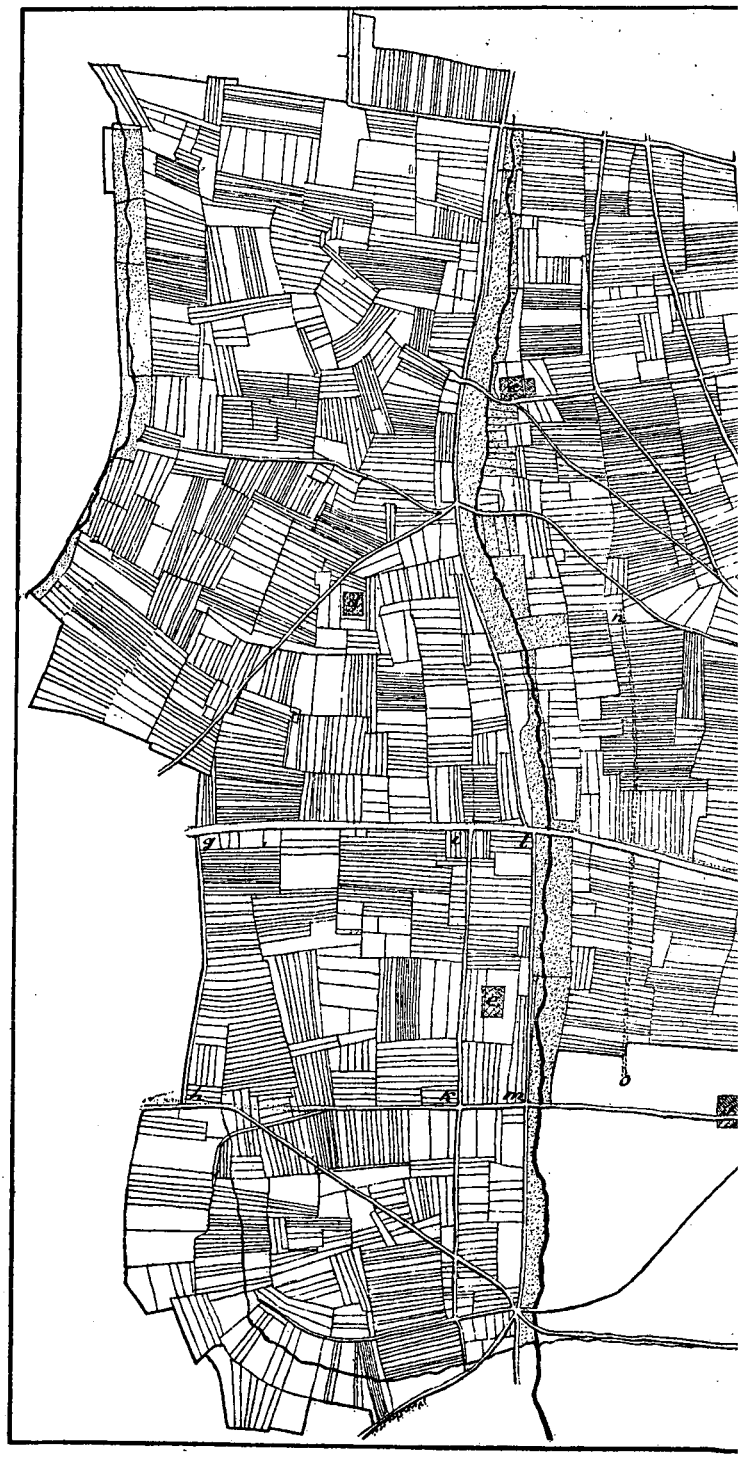

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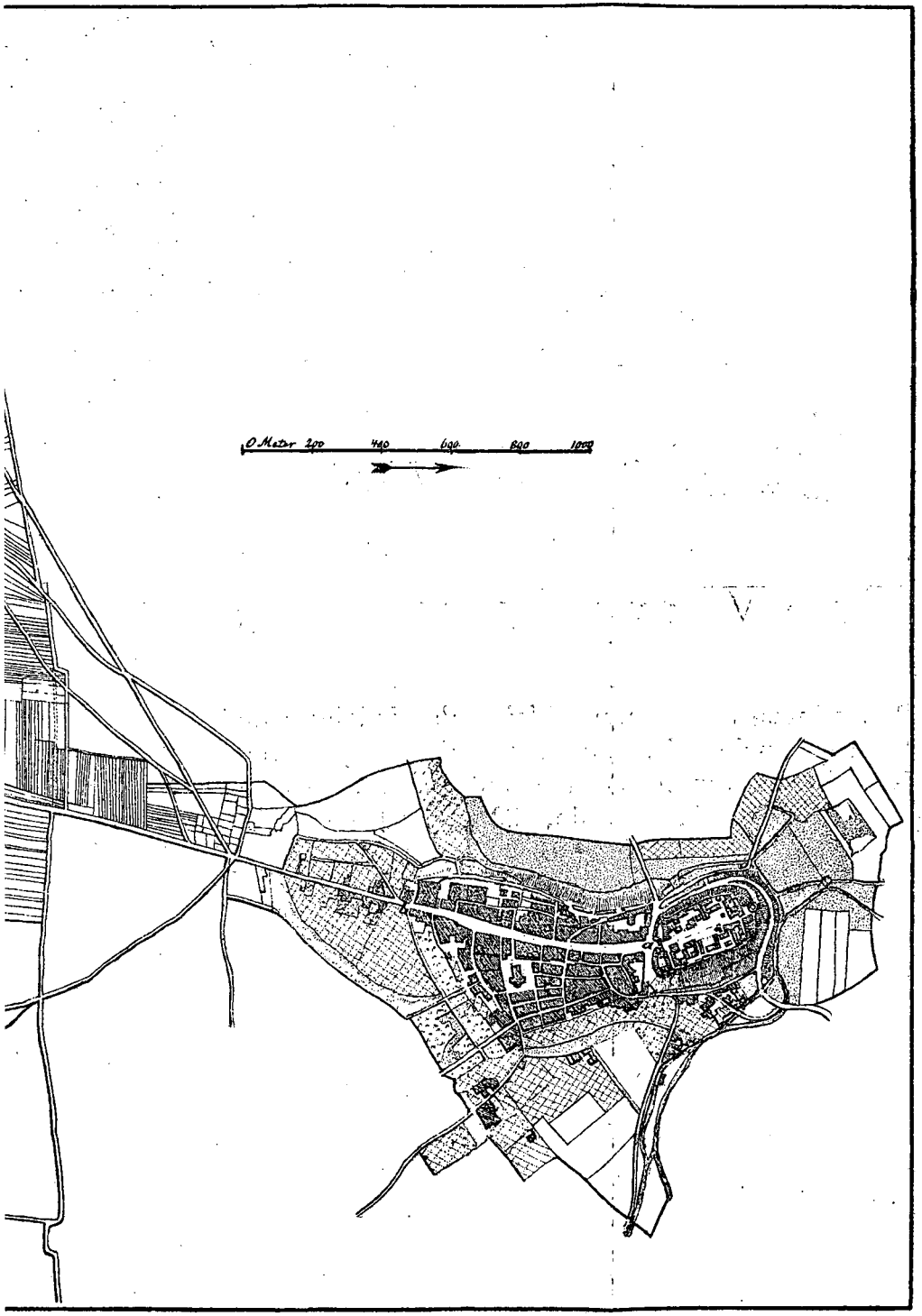
DBERG in der Wetterau.



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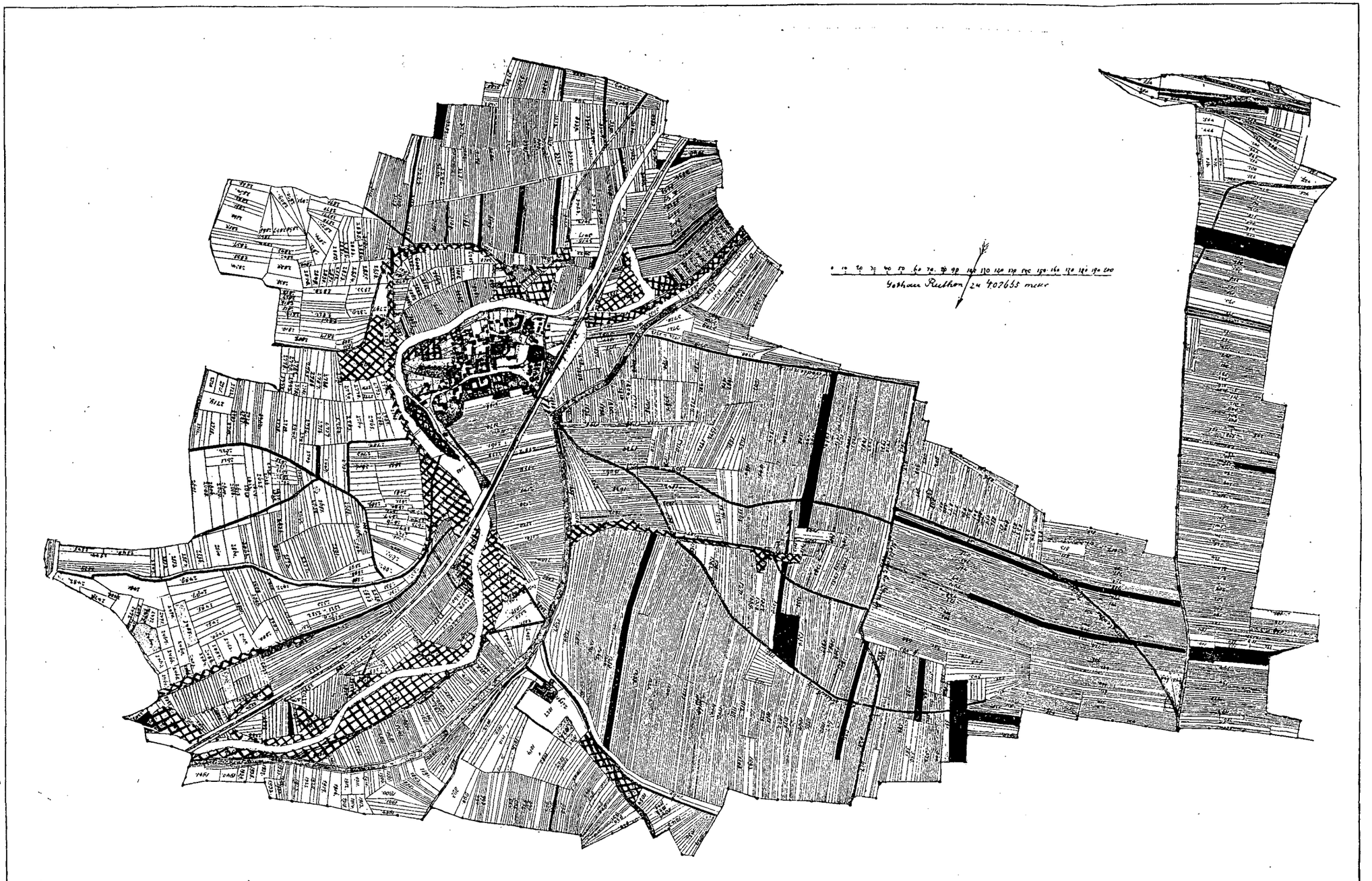
BISCHLEBEN, Herzogthum Gotha.



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CONGRESSIONAL REGULATION OF STATE TAXATION

ALL property that is subject to taxation is either corporeal or incorporeal. Corporeal property consists of things which are tangible and material and which on that account have a physical existence somewhere in space. If they are immovable, the particular point in space at which they are to be found is unchangeable. Such is the characteristic of land. Such also is for all practical purposes the characteristic of buildings. They have at least a relatively permanent situs. Of course, buildings may be destroyed and the materials of which they were constructed may be used again for building purposes. In such a case the old building has ceased to exist and a new building has come into existence with a new situs. And of course a building may be moved as a whole from one place to another. In any of these contingencies the question of situs is easily determinable.

What is true of immovables is true also of movables which are tangible and material. Property of this character is always somewhere in space. The particular point in space at which it is to be found is of course changeable; but as no material thing can be in two places at the same time, no doubt can arise as to its being at a particular point in space at a particular moment of time if the facts with regard to it are known. The question of the situs of tangible movable property can, therefore, cause no theoretical difficulties so long as we are governed by facts, and so long as fictions which may have been adopted for use in other branches of the law are not permitted to influence the law of taxation.

Such was the reasoning of the New York Court of Appeals in the case of People *ex rel.* Hoyt *v.* Commissioners,[1] which held that tangible movable property actually outside of the state but belonging to a resident of the state was not "personal estate

[1] 23 N. Y. 224 (1861).

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within this state" under a law subjecting such property to taxation. In adverting to the claim "that personal estate by a fiction of law has no situs away from the person or residence of the owner and is always deemed to be present with him at the place of his domicil," the court says:

> There seems to be no place for the fiction of which we are speaking in a well-adjusted system of taxation. In such a system a fundamental requisite is that it be harmonized. But harmony does not exist unless the taxing power is exerted with reference exclusively either to the situs of the property or to the residence of the owner. Both rules cannot obtain unless we impute inconsistency to the law and oppression to the taxing power.

When, however, we come to consider the second kind of property, *i. e.* property which does not consist of tangible and material things and which for that reason does not have a physical existence at any point in space, we must resort to some sort of fiction, if for any legal purpose, and in particular for the purpose of taxation, we are to give it a situs at any place. The legal fiction to which resort has most commonly been had, in order to determine questions of jurisdiction over this kind of property, has been the fiction to which the New York court alluded, *viz.* that the situs of movable property is the domicil of its owner. This fiction has been expressed in the Latin maxim, *mobilia personam sequuntur*.

This fiction is not, however, the only one that might have been adopted. In the case of a debt, it is possible to take the view that the situs of the debt shall be the domicil of the debtor, or, in case there is some written evidence of the debt, that the situs of the debt shall be the place where such written evidence is kept, regardless of the domicil of either the creditor or the debtor. In the case of shares of corporate stock, it is possible to say that the situs of the property shall be either the domicil of the corporation or the place where the stock certificate is kept.

I

In the United States, with its numerous independent jurisdictions, the application of different fictions regarding the situs

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of personal property easily leads to multiple taxation. It has been quite possible, for example, where a person residing in one state holds a promissory note payable by a person residing in another state and the holder of the note habitually keeps it in a third state, for each of the three states to subject this property to taxation.[1] Indeed, if the promissory note be secured by a mortgage on land situated in a fourth state, that state also may assert a right to force the mortgagee to pay taxes to it. Until the adoption of the fourteenth amendment, which forbids any state to deprive a person of life, liberty or property without due process of law, no limits were imposed by the Constitution of the United States upon the power of the states to tax any kind of property, real or personal, over which they might have jurisdiction, even though such jurisdiction were based upon the adoption of a legal fiction.

It is of course true that the state courts have quite commonly adopted the view set forth in the Hoyt case, *viz.* that in the law of taxation fictions should not be permitted to override facts; but their decisions, which were based on their interpretations of legislative intention, had not the effect of limiting legislative power. If the legislature so changed the law as to subject to taxation property which the state courts had held to be exempt, these courts could only apply the new law.[2]

The Supreme Court of the United States at first regarded its position as similar to that of the state courts. In the case of Kirtland *v.* Hotchkiss,[3] decided in 1879, it held that it was powerless to prevent a state from applying the maxim *mobilia personam sequuntur*, so as to bring within its taxing jurisdiction mortgages owned by a citizen of the state upon property in another state in which the mortgagor resided. It reached this conclusion because of its belief that the Constitution of the United States did not prevent a state from taking such action. And for the same reason it held, twenty years later, that notes largely secured by mortgages on real estate might be taxed by

[1] *Cf.* Matter of Tiffany, 143 App. Div. N. Y. 327?

[2] *Cf.* People *ex rel.* Jefferson *v.* Smith, 88 N. Y. 576, which led to the change by the legislature of New York of the law with regard to the situs of intangible movable property.

[3] 100 U. S. 491.

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the state in which the land was situated, although the owner of the notes was a resident of another state.[1]

Under these decisions it is constitutionally possible for taxes to be laid by several states upon the same property. This is true not only in the case of property taxes but also in the case of inheritance or succession taxes. In the latter class of taxes particularly, state laws provide two rules for determining the situs of property, *viz.* the rule of *mobilia personam sequuntur* and the rule of the situs; and under the latter rule the situs of debts is determined by the fiction that the property is where the debtor is, or, in case of shares of corporate stock, is at the domicil of the corporation. The employment of inconsistent fictions is the easier in the case of succession taxes, because what is here taxed is, from the legal point of view, not the property but its transfer, and this may require legal proceedings in two or more states. For example, in the case of debts owed by a resident of a state other than that in which the decedent resided, the transfer may take place under the law of the state of residence of the decedent, which governs the universal succession, and also under the law of the state where the debtor is found and where some sort of ancillary administration deals with the particular succession.

Repeated taxation of the same property by different states has become so common and is productive of such serious injustice that in its later decisions the Supreme Court of the United States has gradually come to the view that from the exercise of the taxing power of a state there may result a taking of property without due process of law which is in violation of the fourteenth amendment to the United States Constitution.

For this later line of decisions the way was paved by decisions in which no constitutional question was raised, but in which the jurisdiction of the taxing state over the property subjected to taxation was considered and denied.

The first case in which a state tax was held void by the Supreme Court of the United States because it had been laid on property not in the jurisdiction of the state is apparently

[1] New Orleans *v.* Stempel, 175 U. S. 309 (1899).

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Railroad Co. *v.* Jackson,[1] decided in 1868. The suit was brought in a federal circuit court by an alien, resident in Ireland, against the Northern Central Railroad Company, a Maryland corporation, to recover the amount of certain coupons. The company offered to pay the amount less a tax of three mills per dollar of the principal of each bond, asserted to be due to the state of Pennsylvania, but would not pay more. Offer of such payment was refused. The court below charged that if the plaintiff, when he purchased the bonds, was a British subject resident in Ireland and still resided there, he was entitled to recover the amount of coupons without deductions. It was the correctness of this charge which, after verdict and judgment in accordance with it, was questioned on appeal to the Supreme Court. That court affirmed the judgment of the court below on the theory "that to permit the deduction of the tax from the coupons in question would be giving effect to the acts of the legislature of Pennsylvania upon property and interests lying beyond her jurisdiction." This case came before the federal court, not because it involved a federal question, but because of the diversity of citizenship of the parties, and the decision of the Supreme Court was drawn from principles of general law.

The next case was St. Louis *v.* The Wiggins Ferry Company,[2] decided in 1870. The city of St. Louis had by its charter power to tax all property within the city that was taxable under the laws of the state. A law of the state provided for the taxation of "shares of stock and all other interests in steamboats, keel-boats, wharf-boats and all other vessels." The city imposed a tax on the Wiggins Ferry Company for the value of all its boats used in ferrying passengers and cargoes on the Mississippi river between the city of St. Louis,

[1] 7 Wallace, 262. There are a number of cases in which attempts on the part of states to tax ships engaged in foreign or interstate commerce were held to be improper because, as attempts to impose taxes on property not within the jurisdiction of the state, they were regarded not as taxes on property but as unconstitutional burdens on commerce. Such cases are Hays *v.* Pacific Mail Steamship Company, 17 Howard, 596 (1854); Morgan *v.* Parham, 16 Wallace, 471 (1872); Gloucester Ferry Company *v.* Pennsylvania, 114 U. S. 196 (1884).

[2] 11 Wallace, 423.

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Missouri and East St. Louis in Illinois. The ferry company was an Illinois corporation but had its principal office in St. Louis. Its boats, when not in use, were laid up on the Illinois shore and were forbidden by an ordinance of St. Louis to remain at the St. Louis wharf longer than ten minutes at a time. The company refused to pay the tax, and suits were brought for its collection in the St. Louis court. Upon the petition of the company these suits were removed into the United States court. (The reason for the removal is not stated; diversity of citizenship, however, would apparently have been sufficient ground for removal.) Judgment was given for the defendant and the case went to the Supreme Court for review. This court held that the city had acted in excess of its jurisdiction and said:

> Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the legislature of a state should enact that the citizens or property of another state or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislation as to valid judicial action.

Thus it is seen that in two well considered cases the Supreme Court adopted the view that a tax by a state on property not within its jurisdiction was void and that the United States courts would decide it to be so in suits coming within their jurisdiction by reason of diversity of citizenship. As late, however, as 1870 the court did not appear to consider that a tax on property outside of the state jurisdiction in and of itself involved a federal question. By this time the fourteenth amendment had been added to the Constitution, but there is no suggestion in the decision that its provisions were regarded as applicable.

In 1872, however, the Supreme Court decided, in State Tax on Foreign-Held Bonds,[1] that under certain conditions the attempt of a state to tax property outside of its jurisdiction might lead to a violation of the United States Constitution. In this case

[1] 15 Wallace, 300.

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the state of Pennsylvania attempted to impose a tax on the interest of all bonds of certain companies incorporated under the laws of the state. The tax was to be paid by each of the companies, which should pay said interest to its bondholders less the amount of the tax paid to the state. The attorney-general of the state brought an action in the state courts against a railway company which had refused to pay the tax. He recovered judgment, and this judgment was affirmed by the highest court of the state. The case was carried by writ of error to the Supreme Court of the United States, on the theory that the act of Pennsylvania impaired the obligation of a contract, and thus was violative of the United States Constitution. The Supreme Court of the United States reversed the judgment of the Pennsylvania court and held that there was an impairment of the obligation of a contract, since the bonds, the interest on which was taxed, were for the most part the property of non-residents. The court took the view, contrary to the view of the Pennsylvania court, that a mortgage bond was not under the law of Pennsylvania an interest in the real estate in Pennsylvania upon which it was secured, but was a debt; that the situs of this debt was outside of the state, since it was owed to a non-resident; that the debt taxed was thus not in the jurisdiction of the state; and that the law of the state requiring the company to retain part of the interest due the bondholder and to pay it over to the state, not being capable of justification as a tax law, necessarily impaired the obligation of the contract between the company and the bondholder and was therefore void. However, no mention of the fourteenth amendment is made in the opinion, and thus the case is not authority for the rule that the taxation by a state of property outside of its jurisdiction will result in the taking of property without due process of law.

The court, starting with the idea that in cases coming before it as result of diversity of citizenship it might refuse to give effect to a state law which attempted to tax property outside of the jurisdiction of the state, had, however, now reached the conclusion that the attempt of a state to tax such property might involve a question under the Constitution of the United

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States. Such was also the conclusion of the court in the cases already mentioned,[1] in which attempts on the part of states to tax property not within their jurisdiction and belonging to corporations engaged in interstate commerce were held to be unconstitutional as imposing taxes on such commerce.

In the later case of Savings Society *v.* Multnomah County,[2] decided in 1897, the court was called upon to consider a question very similar to that decided in the Foreign-Held Bonds Tax case. A law of the state of Oregon provided that a mortgage on land in the state for the security of a debt should "for the purposes of assessment and taxation be deemed and treated as real property" and should be taxed to the owner of such debt in the county where the land affected by the security was situated, and that the mortgagor might deduct the debt secured by the mortgage from the assessment of his property for taxes. Certain non-residents holding mortgages on land in Oregon brought injunction proceedings in the federal court to restrain the collection of the taxes on their mortgages. They alleged, not that the law impaired the obligation of a contract, for the mortgages were all made subsequent to the passage of the tax law, but that it deprived them of their property without due process of law. The Supreme Court held, however, that the state of Oregon had, for the purpose of taxation, power to treat a mortgage of land in the state, when owned by a non-resident, as land; and it referred with disapproval to its own opinion in State Tax on Foreign-Held Bonds. It said:

> The remarks in the opinion, supported by quotations from opinions of the Supreme Court of Pennsylvania, that a mortgage, being a mere security for the debt, confers upon the holder of the mortgage no interest in the land, and when held by a non-resident is as much beyond the jurisdiction of the state as the person or owner, went beyond what was required for the decision of the case and cannot be reconciled with other decisions of this court and of the Supreme Court of Pennsylvania.

It is difficult to comprehend how these statements "went beyond what was required for the decision of the case;" for the whole theory of an impairment of the obligation of a contract

[1] *Cf. supra* p. 409, note.

[2] 169 U. S. 412.

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was based upon the assumption that the law was not capable of justification as a tax law, because it attempted to tax property not within the jurisdiction of the state.

However that may be, the Multnomah County case was decided on the theory, not that the obligation of a contract was not impaired, but that property had not been taken without due process of law, since the tax complained of was imposed upon property within the jurisdiction of the state. But while it was apparently assumed that the taxation of property not within the jurisdiction might be regarded as a taking of property without due process of law,[1] no case was cited to prove that such was the accepted rule of constitutional law.

The first case in which the Supreme Court has squarely held that a state tax on property not within the jurisdiction of the state constitutes a taking of property without due process of law is Louisville and Jeffersonville Ferry Company *v.* Kentucky,[2] decided in 1902. In this case the state of Kentucky attempted to assess for taxation the franchise of a ferry company to operate a ferry on the Ohio river to the Indiana shore. The franchise attempted to be taxed was granted by the state of Indiana. The court held that this franchise, which it regarded as an incorporeal hereditament, was not within the jurisdiction of the state of Kentucky, and that its taxation by Kentucky was "a deprivation by that state of the property of the ferry company without due process of law in violation of the fourteenth amendment of the Constitution of the United States." This principle was later applied to coal situated out of the state, in Delaware, Lackawanna and Western Railway Company *v.* Pennsylvania,[3] and to rolling stock similarly situated, in Union Refrigerator Transit Company *v.* Kentucky.[4] For the decision in the Louisville and Jeffersonville Ferry case, support was found in St. Louis *v.* The Wiggins Ferry Company;[5] and in the

[1] The court said: "The case then reduces itself to the question whether this tax act, as applied to mortgages owned by citizens of other states and in their possession outside of the state of Oregon, deprives them of their property without due process of law."

[2] 188 U. S. 385.

[3] 198 U. S. 341 (1904).

[4] 199 U. S. 194 (1905).

[5] *Supra*, p. 409.

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Union Refrigerator Transit Company case reference is made to Railroad Company *v.* Jackson[1] and to State Tax on Foreign-Held Bonds.[2] It may therefore be said that a rule which was enunciated by the court prior to the passage of the fourteenth amendment, and which was applied by virtue of its jurisdiction in cases of diversity of citizenship and not because the cases themselves arose under the Constitution and laws of the United States, has of recent years been made the basis for finding a violation of the fourteenth amendment. In 1868 taxation of property not within the jurisdiction of the taxing state was held to be invalid simply because the state law could not operate beyond the state boundaries. In 1902 such taxation was found to be unconstitutional because contrary to due process of law.

Up to the present time, however, the court has confined the application of the due process provision of the fourteenth amendment (except in one instance, to which attention will be called later) to the taxation of real property and of tangible personal property. In the taxation of intangible personal property it has held that the state legislatures have almost as much discretion now as they had prior to the passage of the fourteenth amendment. Thus it has been decided that state taxation of intangible personal property is valid in the following cases: where mortgages on property situated outside of the state are owned by a resident of the state[3]; where the land on which mortgages are placed is in the state, even though the mortgagee is a non-resident[4]; where the written evidences of credits for money loaned in the state by a non-resident through a resident agent are kept within the state together with collateral security[5]; and finally where money is loaned in the state by non-residents through resident agents, although the notes which are evidence of the loan transactions are kept for the most part out of the state and are only sent to the state for col-

[1] *Supra*, p. 409. [2] *Supra*, p. 410.

[3] Kirtland *v.* Hotchkiss, 100 U. S. 491.

[4] Savings Society *v.* Multnomah County, 169 U. S. 392; New Orleans *v.* Stempel, 175 U. S. 309.

[5] State Assessors *v.* Comptoir National d'Escompte, 191 U. S. 388.

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lection.[1] The one case in which state taxation of intangible personal property has been found to be irreconcilable with due process of law, because the taxing state lacked jurisdiction, is Buck *v.* Beach,[2] decided in 1907. In this case the court holds that the mere presence in a state of unendorsed promissory notes with the mortgages by which they are secured is not sufficient, where the owner of such notes and mortgages is a non-resident and the property mortgaged is in another state, to give jurisdiction to the state in which the notes are kept, and that the attempt of such state to tax these notes is a violation of the fourteenth amendment.

In the matter of inheritance or succession taxes, it is clear that the fourteenth amendment can give no greater protection against double taxation than it gives in the matter of ordinary property taxes. It may perhaps be construed to give less protection. The Supreme Court has held that the discretionary power of the several state legislatures to determine what tangible movable property is within their jurisdiction for purposes of taxation is limited by the requirement of due process. Succession taxes, however, as is noted above, are not, in legal theory, taxes upon the property transferred but on its transfer. The state in which the decedent was domiciled may impose a tax upon the transfer of the entire personal estate, wherever situated. Other states in which particular assets are situated may impose a tax upon the transfer of these assets. The Supreme court has not as yet made it clear that in the matter of succession taxes the protection of the fourteenth amendment will extend to tangible movable property. The only important case in which the effect of the situs of property upon the power of the state to tax the succession has been fully considered is Blackstone *v.* Miller,[3] decided in 1902. In this case the state of New York attempted to impose a succession tax on a sum of money belonging to the estate of a non-resident decedent and deposited in a New York bank. The court held

[1] Bristol *v.* Washington Company, 177 U. S. 133; Metropolitan Life Insurance Company *v.* New Orleans, 205 U. S. 395.

[2] 206 U. S. 392.

[3] 188 U. S. 189.

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the tax not to be a deprivation of property without due process of law. It declared that the transfer of the money deposited depended upon the law of New York, "because of the practical fact of its power over the person of the debtor." It did not consider as pertinent "any theoretical speculation concerning the whereabouts of the debt." "Power over the person of the debtor confers jurisdiction. . . And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of death."[1] But in the recent case of Keeney *v.* New York,[2] decided in 1912, in which a tax imposed by New York upon a transfer of stocks and bonds by deed intended to take effect on the death of the grantor, a resident of the state, was held to be constitutional, the court said: "The real estate and tangible property in Texas were not within the taxing jurisdiction of the state of New York, and there was no effort to tax the transfer of that property"—apparently implying that if the attempt had been made to tax the transfer of the tangible personal property in Texas, it would not have been approved. If this is to be the rule adopted by the Supreme Court, the attempt of a state to tax the transfer of tangible personal property actually in another state will be quite as unconstitutional as the attempt to impose a property tax on such property.

It will be seen accordingly, that the Supreme Court has not as yet been able and willing to protect personal property against double taxation, except in the case of tangible movables. These it has protected against double property taxes and may protect against double succession taxes. To intangible personal property it has been either unable or unwilling to give similar protection, although it recognizes that the taxation of property outside of the jurisdiction of the taxing state is a taking of property without due process of law.

[1] It will be remembered, however, that this "power over the person of the debtor" was held not to give jurisdiction in State Tax on Foreign-Held Bonds.

[2] 222 U. S. 525.

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II

If any relief from the conditions of injustice which now prevail is to be expected, either it must be sought from the coöperation of the states, which is most difficult to secure, or the attempt must be made to show that Congress possesses powers in the premises which it may exercise with a reasonable hope of attaining the end sought. On account of the length of time during which state-rights feelings have controlled political thought in this country, and, to a considerable extent, judicial reasoning also, and on account of the general persistence of these feelings today, any proposal which looks towards an increase in the powers hitherto exercised by Congress is apt to meet with disapproval, not only from the viewpoint of its political expediency but also from that of its constitutionality. It is therefore incumbent upon anyone who makes such a proposal to overcome a presumption of congressional incompetence. This presumption is based, not alone upon the fact that the United States government is one of enumerated powers, but also upon a theory of congressional power which has behind it many years of historical tradition and of political if not judicial interpretation.

Is there, then, reasonable ground for believing that Congress has powers of legislation which may be employed to remedy the conditions of injustice in the field of state taxation which have been noticed?

In answering this question, it must at once be admitted that Congress has no such authority except as it may be found in the fourteenth amendment. Up to the present time the provisions of this amendment have been so frequently used by the federal courts to circumscribe the field of state legislative action that any suggestion that this amendment confers wider legislative powers upon Congress seems at first blush almost absurd. And yet the fifth and last section of the amendment provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Inasmuch as the last sections of both the thirteenth and fifteenth amendments make similar grants of power to Congress, an examination of the decisions defining the powers of Con-

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gress under those amendments is pertinent to the discussion of the legislative power of Congress under the fourteenth amendment. But before undertaking such an examination attention should be called to the fact that the purpose of the three amendments is somewhat different.

The thirteenth amendment declares that "neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." This amendment fixes an absolute rule of law, which is directly binding upon every one within the obedience of the United States. It not only prohibits the establishment by law of human slavery but also imposes upon every one in the United States the duty not to hold any human being in involuntary servitude except as a punishment for crime.

The prohibitions of the fourteenth and fifteenth amendments, on the other hand, are directed not so much to the individuals within the obedience of the United States as to the states. These are forbidden to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; to deprive any person of life, liberty or property without due process of law; to deny to any persons within their jurisdiction the equal protection of the laws; to deny or abridge the right of citizens of the United States to vote, on account of race, color or previous condition of servitude. This last prohibition is imposed upon the United States as well as upon the several states.

In the exercise of its powers of legislation under the thirteenth amendment Congress has passed the Anti-Peonage Acts.[1] In

[1] Revised Statutes, secs. 1990, 5526. These acts provide that "the holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico or in any other territory or state to the United States;" declare that "all acts, laws, resolutions, orders, regulations or usages of the territory of New Mexico, or of any other territory or state which have heretofore established, maintained or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation or otherwise," are "null and void;" and punish "every person who holds, arrests, returns or causes to be held, arrested or returned, or in any manner aids in the arrest or return of any person to a condition of peonage."

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these acts it will be noticed that Congress has defined involuntary servitude as the holding of any person to labor "in liquidation of any debt or obligation or otherwise," and has declared all state laws null and void which provide for such involuntary servitude. Of the few cases involving the powers of Congress under this amendment that have come before the Supreme Court the two most important are Clyatt *v.* United States,[1] decided in 1904, and Bailey *v.* Alabama,[2] decided in 1910.

In Clyatt *v.* United States a certain person was indicted in a circuit court of the United States for having unlawfully and knowingly returned certain other persons to a condition of peonage by obliging said persons to work out a debt. A trial resulted in a verdict of guilty and the defendant was sentenced to confinement at hard labor. The case came up on appeal to the Supreme Court. The verdict was set aside and a new trial granted because no evidence had been produced at the trial to prove that the persons alleged to have been returned to a state of peonage had ever been in that condition. In the course of its opinion the court took occasion to consider the constitutionality of the act of Congress and without dissent upheld it. It said:

> That which is contemplated by the statute is compulsory service to secure the payment of a debt. Is this legislation within the power of Congress? It may be conceded as a general proposition that the ordinary relations of individuals are subject to the control of the states and are not entrusted to the general government, but the thirteenth amendment . . . denounces a status or condition irrespective of the manner or authority by which it is created . . . simply forbids slavery and involuntary servitude [and] grants to Congress power to enforce this prohibition by appropriate legislation.

In the case of Bailey *v.* Alabama the question at issue was not so much the constitutionality of an act of Congress as that of an act of a state legislature. The state law, which was declared unconstitutional, provided that the receipt of an advance of money or property, in return for making a labor contract, with intent to defraud the person making the advance by not

[1] 197 U. S. 207. [2] 219 U. S. 219.

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carrying out the contract, was a crime, and that the mere receipt of the advance and the refusal without just cause to work under the contract without returning the advance should be presumptive evidence of intent to defraud. In its opinion reaffirming the constitutionality of the anti-peonage acts of Congress, the court said:

> Peonage is a term descriptive of a condition which has existed in Spanish America and especially in Mexico. The essence of the thing is compulsory service in payment of a debt. A peon is one who is compelled to work for his creditor until his debt is paid. And in this explicit and comprehensive enactment Congress was not concerned with mere names or manner of description, or with a particular place or section of the country. It was concerned with a fact, wherever it might exist; with a condition, however named and wherever it might be established, maintained or enforced. The fact that the debtor contracted to perform the labor which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. . . . The act of Congress nullifying all state laws by which it should be attempted to enforce the "service or labor of any persons as peons, in liquidation of any debt or obligation or otherwise," necessarily embraces all legislation which seeks to compel the service or labor by making it a crime to refuse or fail to perform it. Such laws would furnish the readiest means of compulsion.

It will be remembered that the statute forbids the holding to service of any persons not merely in liquidation of any debt or obligation but also "or otherwise." Suppose a state law should make it a crime for an employee of a railway company to leave his post before the expiration of any contract of labor that he might have signed. Could it be contended, since Bailey *v.* Alabama, that such an act was not in violation of the act of Congress which thus forbids holding a person to performing a labor contract "in liquidation of any debt or obligation or otherwise" and which, as has been shown, has been upheld as constitutional in two cases? On the other hand, could Congress provide, the thirteenth amendment notwithstanding, that the abandonment of his labor contract by an employee engaged in interstate commerce should be criminally punished? Mr. Justice Harlan would seem to have thought so; for in giving

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the opinion of the court in Adair *v.* United States,[1] decided in 1908, he said: "And it may be—but upon that point we express no opinion—that in the case of a labor contract between an employer engaged in interstate commerce and his employee, Congress could make it a crime for either party without sufficient or just excuse or notice to disregard the terms of such contract or to refuse to perform it." Such a power, if Congress possesses it, must flow from its power to regulate commerce among the several states; but as the national legislative power is subject to the limitations of the thirteenth amendment, the recognition of such a power in Congress would be an admission that Congress may within limits define what is involuntary servitude.

The opinion of the Supreme Court in the earlier case of Robertson *v.* Baldwin,[2] decided in 1897, would seem to support this view. In this case the court upheld as constitutional an act of Congress providing for the apprehension and delivery to the master of the vessel of seamen deserting prior to the termination of the voyage for which they had been hired. This act of Congress was not regarded as violative of the thirteenth amendment. Although this decision has not been expressly or impliedly overruled, it may be argued that the reasoning by which the court reached its conclusion has lost much of its force since the rendering of the opinions above referred to; for the judgment in Robertson *v.* Baldwin is based, first, on the theory that a "servitude which was knowingly and willingly entered into could not be termed involuntary"—a theory repudiated in the later decisions—and, second, on the assumption that the thirteenth amendment was passed in view of the existing maritime law, which very generally treated the obligation of seamen as different from that assumed by ordinary workmen. It would not be difficult, however, to show that early English and American law punished criminally also the violation of other labor contracts. Indeed this is stated to be the case in the majority opinion.

Mr. Justice Harlan's dissenting opinion in this case brings

[1] 208 U. S. 161. [2] 165 U. S. 275.

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out clearly the logical consequences of the court's position. He says:

> If Congress, under its power to regulate commerce with foreign nations and among the several states, can authorize the arrest of a seamen who engaged to serve upon a private vessel and compel him by force to return to the vessel and remain during the term for which he engaged, a similar rule may be prescribed as to employees upon railroads and steamboats engaged in commerce among the States. . . . Again, as the legislatures of the states have all legislative power not prohibited to them, while Congress can only exercise certain enumerated powers for accomplishing specified objects, why may not the states, under the principles this day announced, compel all employees of railroads engaged in domestic commerce, and all domestic servants and all employees in private establishments within their respective limits, to remain with their employers during the terms for which they were severally engaged, under the penalty of being arrested by some sheriff or constable and forcibly returned to the service of their employers? The mere statement of these matters is sufficient to indicate the scope of the decision this day rendered.

The apprehensions thus expressed were not realized; for just such a state law as was foreshadowed by Mr. Justice Harlan was subsequently declared void in Bailey *v.* Alabama. It may, however, be said that the Alabama law was declared void because it violated an act of Congress. Indeed it is difficult to reconcile Robertson *v.* Baldwin and Bailey *v.* Alabama except upon the theory that Congress, in the exercise of the legislative power given to it by the thirteenth amendment, has authority to determine what is involuntary servitude. This authority once admitted, all inconsistency between the two cases disappears. In the one case an act of Congress imposed on seamen an obligation to perform their labor contracts, which obligation may, under the decision, be enforced by the government; in the other case another act of Congress declared void all state laws providing for holding persons to labor in liquidation of a debt.

It is because, unlike the thirteenth amendment, the fourteenth operates only on the states and not on the individual citizens of the United States that the Supreme Court has held unconstitutional congressional legislation, such as the Civil Rights Bills of

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1870 and 1875, which attempted to punish actions by individuals in derogation of the ordinary rights of other individuals. The court has asserted that the only legislation of this character which Congress may pass under the last section of the fourteenth amendment or under the Constitution as originally adopted is, first, legislation against action by states prohibited by the fourteenth amendment and, second, legislation protecting from individual attack rights which citizens of the United States have under the Constitution or laws of the United States.[1] Legislation of the second class has no significance as regards the question with which we are at present concerned; we have to consider only the powers of legislation possessed by Congress with regard to action on the part of the states which is prohibited by the fourteenth amendment.

The first case in which the Supreme Court considered the legislative powers of Congress under the fourteenth amendment is United States *v.* Cruikshank,[2] decided in 1875. In this case certain persons were indicted for having conspired contrary to an act of Congress to deprive certain citizens of the United States of their rights under the Constitution and laws of the United States. The indictments were held to be bad, not because the act under which they were had was unconstitutional, but because the particular rights alleged to have been affected, such as the rights peaceably to assemble and to bear arms, were not rights derived from the Constitution and laws of the United States. These rights, the court held, were possessed by the individual either as inherent rights or as rights granted to him by the state constitutions and were protected by the United States Constitution only against infringement on the part of the United States government. Following the views which had been expressed in the Slaughter House Cases,[3] decided in 1873, the court indicated that the rights of citizens under the Constitution were different from their ordinary private rights, and that the latter were under the protection of the states and not of the United States.

[1] *Cf.* for example, United States *v.* Waddell, 112 U. S. 76.

[2] 92 U. S. 543. [3] 16 Wallace, 74.

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The first case in which the Supreme Court was obliged to determine the extent of the legislative power of Congress under the fifth section of the fourteenth amendment was United States *v.* Harris,[1] decided in 1882. The defendant in this case was indicted for violation of section 5519 of the Revised Statutes, which punished conspiracies by private individuals to deprive any persons or class of persons of the equal protection of the laws or to prevent state authorities from giving to all persons in a state the equal protection of the laws. This section of the Revised Statutes was held to be unconstitutional because it undertook to control the action of private individuals. The Court said:

> Section 5519 of the Revised Statutes is not limited to take effect only in case the state shall abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty or property without due process of law or deny to any person the equal protection of the laws. It applies no matter how well the state may have performed its duty. Under it private persons are liable to punishment for conspiracy to deprive any one of the equal protection of the laws enacted by the state.

The rule here laid down was reaffirmed in the Civil Rights Cases,[2] decided in 1883. In these cases the court was again called upon to construe the grant of legislative power in the fourteenth amendment, in order to determine the constitutionality of an act of Congress[3] which undertook to regulate the relations of individuals one with another. The court held the act to be unconstitutional. The grounds for its decision were three in number. In the first place, following United States *v.*

[1] 106 U. S. 629. [2] 109 U. S. 3.

[3] The act provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water, theatres and other places of public amusement; subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." The act further provided that any person who should, contrary to the act, deny to any person such equal rights should pay to the person aggrieved the sum of five hundred dollars and should be deemed guilty of a misdemeanor.

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Harris, the court held that Congress had exceeded its power in that the amendment authorized Congress to legislate only in such a manner as to prevent a state from taking the action forbidden by the amendment, and that the act in question was directed not against state action but attempted to regulate directly the relations of individuals without regard to action on the part of the state. In the second place, the court regarded the statute as bad even under the thirteenth amendment, because it attempted to fix "the social rights of men and races in the community," whereas Congress was authorized by that amendment "only to declare and vindicate those fundamental rights which appertain to the essence of citizenship and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery." In the third place, the court expressed the view that the legislative power granted by the last section of the fourteenth amendment authorized Congress only

to adopt appropriate legislation for correcting the effects of prohibited state laws and state acts and thus to render them effectually null, void and innocuous. This is the legislative power conferred upon Congress and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation, or state action of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights, but to provide modes of redress against the operation of state laws and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the fourteenth amendment; but they are secured by way of prohibition against state laws and state proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect; and such legislation must necessarily be predicated upon such supposed state laws or state proceedings and be directed to the correction of their operation and effect.

The court attempted to distinguish the case at bar from *Ex parte* Virginia,[1] decided in 1879, which upheld as constitu-

[1] 100 U. S. 339.

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tional an act of Congress imposing a criminal punishment on any officer who in the selection of jurors should exclude any citizen possessing the requisite qualifications from serving as a juror because of race, color or previous condition of servitude. The court said that this law was corrective in character, because "disqualifications for service on juries are created only by the law, and the first part of the section is aimed at certain disqualifying laws, namely, those which make mere race or color a disqualification."

The court also attempted to support its position by comparing the prohibitions of the fourteenth amendment with the prohibition of state legislation impairing the obligation of contracts, saying:

> This did not give to Congress power to provide laws for the general enforcement of contracts, nor power to invest the courts of the United States with jurisdiction over contracts so as to enable parties to sue upon contracts in those courts. It did, however, give the power to provide remedies by which the impairment of contracts by state legislation might be counteracted and corrected.

Mr. Justice Harlan, in his dissenting opinion, questioned the legitimacy of this comparison. He was not of the opinion that the contract clause of the Constitution furnished

> a proper illustration of the scope and effect of the fifth section of the fourteenth amendment. No express power is given Congress to enforce by primary direct legislation the prohibition upon state laws impairing the obligation of contracts. Authority is, indeed, conferred to enact all necessary and proper laws for carrying into execution the enumerated powers of Congress and all other powers vested by the Constitution in the government of the United States or in any department or office thereof. . . . But a prohibition upon a state is not a *power in Congress* or *in the national government*. It is simply a *denial of power* to the *state*. And the only mode in which the inhibition upon state laws impairing the obligations of contracts can be enforced is indirectly, through the courts, in suits where the parties raise some question as to the constitutional validity of such laws. . . . The fourteenth amendment presents the first instance in our history of the investiture of Congress with affirmative power by *legislation* to *enforce* an express prohibition

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upon the states. It is not said that the *judicial* power of the nation may be exerted for the enforcement of that amendment. No enlargement of the judicial power was required, for it is clear that, had the fifth section of the fourteenth amendment been entirely omitted, the judiciary could have stricken down all state laws and nullified all state proceedings in hostility to rights and privileges secured or recognized by that amendment. The power given is, in terms, by congressional *legislation* to enforce the provisions of the amendment.

The statement made by the court, that the powers of legislation possessed by Congress under the fifth section of the fourteenth amendment relate only to legislation corrective of preceding or existing state legislation or action, must, it would seem, be regarded as *dictum*, since it is not necessary to the decision of the case. For the act of Congress held unconstitutional was not framed so as to enforce the prohibitions of the fourteenth amendment upon the states. On the contrary, that act attempted regardless of state action to regulate the relations of individuals one with another.

But even if we regard the statement as having the effect of a decision, because it formed a link in the chain of reasoning by which the decision was reached, it is apparently to be interpreted in the light of *ex parte* Virginia, which was referred to with approval. Thus interpreted, it can be regarded as denying to Congress all power to determine by legislation either what is not the due process of law required for the taking of property by a state, or what is the meaning of the equal protection of the laws which a state is forbidden to deny to any person within its jurisdiction. For the court says, in referring to *ex parte* Virginia, that Congress has power, under the fourteenth amendment, to forbid disqualifications for service on juries because such disqualifications are created by state law. Similarly the taking of property without due process of law by a state in the attempted exercise of its taxing powers is necessarily due to the passage and enforcement of a state law. Should Congress undertake to determine what is not due process of law in state taxation, and should it prohibit the taking of property by any of the methods which it declares not to be due process of law, its action would be similar to, if not identical with, the action

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by which it has defined and prohibited certain disqualifications for service on juries.

Up to the present time, it is true, Congress has made no attempt to define due process of law, or even to state what is not due process of law, in the taking of property. But if the fourteenth amendment grants Congress authority to do this, it can hardly be maintained that it has lost the power by non-user. Long-continued failure of Congress to exercise a power can, at the utmost, have no result except to raise a presumption that the power does not exist, and such a presumption is in no wise conclusive.

Congress has defined, however, although not exhaustively, "the equal protection of the laws" under the fourteeeth amendment.[1] The congressional legislation on this subject was considered in a series of cases decided in 1879.[2] In these cases the legislative provisions cited[3] were regarded as instances of a constitutional exercise by Congress of its legislative powers under either the thirteenth or fourteenth amendments; while in *ex parte* Virginia it is said:

> All of the amendments derive much of their force from this latter provision [*i. e.* the section giving Congress power to pass appropriate legislation]. It is not said that the *judicial* power of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that that branch of the government shall be authorized to declare void any action of a state in violation of the prohibitions. It is the power of Congress which

[1] Revised Statutes, secs. 1977, 1978. This legislation provides that "all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, fines, penalties, taxes, licenses, exactions of every kind and to no other;" and that "all citizens of the United States shall have the same right in every state and territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold and convey real and personal property." *Cf.* Revised Statutes, section 64, which provides for the removal of certain causes to the courts of the United States; and section 4 of the Act of March 1, 1875 (18 Stat., part 3, 336), which provided that no citizen should be disqualified to serve as juror because of race.

[2] Strauder *v.* West Virginia, Virginia *v.* Rives, and *ex parte* Virginia, 100 U. S. 303, 313, 339.

[3] See Note 1, *infra*.

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has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain and to secure to all persons the enjoyment of perfect equality in civil rights and the equal protection of the laws against state denial or invasion, if not prohibited is brought within the domain of congressional power. Nor does it make any difference that such legislation is restrictive of what the state might have done before the constitutional amendment was adopted. The prohibitions of the fourteenth amendment were directed to the states and they are to a degree restrictions of state power. It is these which Congress is empowered to enforce and to enforce against state action, however put forth, whether that action be executive, legislative or judicial. Such enforcement is no invasion of state sovereignty.

What is said here was of course said before the decision in the Civil Rights cases; but as *ex parte* Virginia is expressly approved in the opinion in those cases, it may not be affirmed that what is therein said is no longer to be regarded as having force.

It may accordingly be claimed that the decision in the Civil Rights Cases does not exclude the view that Congress may, in the exercise of its legislative powers under the fifth and last section of the fourteenth amendment, prohibit as a taking of property without due process of law the exercise of the taxing power of the several states in at least some instances; for example, the taxation by states of mortgages apart from the domicil of the mortgagee or apart from the situs of the land upon which they are secured. In other words, Congress has some degree of power to define as against state action what is a taking of property without due process of law, just as it has some degree of power to define under the thirteenth amendment what is "involuntary servitude" and under the fourteenth amendment what is "the equal protection of the laws."

The question will naturally at once present itself: how can Congress declare not to be due process of law that which the Supreme Court has declared to be due process of law? The

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answer to this question must be that it is the duty of the competent legislative body, subject to the control of the court to be exercised for the protection of private rights, to determine what is not "due process of law," just as it is its duty to define "involuntary servitude" and "the equal protection of the laws." Thus, although the Supreme Court has held, as has been shown,[1] that a seaman who is compelled by law to carry out his contract is not in involuntary servitude, Congress may nevertheless declare that no one whether a seaman or not shall be forced to carry out a contract of labor made in liquidation of a debt.[2] Congress may do this because it has legislative power over the matter. In such cases the courts may of course declare unconstitutional, as denying due process of law or equal protection of the laws, or as establishing involuntary servitude, some law which the legislature may have passed. Where the court has thus acted, Congress would cease to have power. Thus, as the decisions now stand, it would be unconstitutional for Congress to provide that the taxation of tangible movables in the state of the owner's domicil, where that is different from the situs of such movables, shall not be regarded as a taking of property without due process of law; for the court has declared that, for the purpose of property taxation, tangible movables are subject only to the state in which they are situated, and that their taxation by any other state is a taking of property without due process of law. It is also true that the Supreme Court would have the right to hold an act of Congress unconstitutional which provided that what it considered due process, should not be regarded as due process of law. But it has the same right with regard to an act which attempts to regulate interstate commerce. The existence of such a power does not prevent Congress from having and exercising primary powers in regulating and to a degree even defining commerce. In the absence of action by Congress the court often adopts views which it subsequently abandons when Congress takes action. There is, therefore, substantial ground for assuming

[1] Robertson *v.* Baldwin, 165 U. S. 275; *supra*, p. 421.

[2] Bailey *v.* Alabama, 219 U. S. 219.

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that any declaration on the part of Congress that certain acts of a state are not due process of law would have a decided influence upon the attitude of the federal judiciary.

Such legislation of Congress as is here proposed might reach a result with regard to state taxation of movable property similar to that already reached with regard to state taxation of national banks. It will be remembered that Congress has provided that a state may tax the holders of shares in a national bank at the place where the bank is situated, and not elsewhere, provided that the rate of taxation is no higher than that upon other moneyed capital; and the Supreme Court has held that the states may not tax national banks in any other way than that provided by Congress.[1] It is true, of course, that the power of Congress to regulate in this manner the state taxation of national banks is not based upon the fourteenth amendment. But the fact remains that Congress has, with the approval of the Supreme Court, regulated the situs of national bank shares for the purpose of taxation, and that its action in this respect has not been regarded as in any way violative of state sovereignty.

The fact that this proposed action of Congress would encroach upon what has in the past been regarded as the sphere of state action is not of great significance. In order to uphold such action it would be enough to show that Congress was not exceeding the authority granted to it by the fourteenth amendment to enforce by appropriate legislation the provisions of that article. One of these provisions, as has been shown, restrains the states from taxing property outside of their respective jurisdictions. As Congress may legislate against attempts on the part of the states to establish certain kinds of involuntary servitude or to deny equal protection of the laws, so it may legislate to prevent a state from taxing property not subject to its jurisdiction.

In so doing, Congress might make its prohibitions so specific as to determine what property is outside of the jurisdiction of any state seeking to tax it. This determination would of course be subject to the approval of the Supreme Court, as is a con-

[1] Owensboro National Bank *v.* Owensboro, 173 U. S. 664.

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gressional determination that any state action imposes an involuntary servitude. But the court, in cases coming before it, would be much influenced by the prior declaration of Congress. If the statute were sufficiently comprehensive in its enumeration of the instances of state action prohibited, all the various phases of the problem might be brought before the court for authoritative adjudication in a single case; and such a statute, if upheld by the court, might wholly prevent the several states, in their systems of either property or inheritance taxation, from applying at the same time inconsistent and largely fictitious theories of situs. If this were accomplished, double taxation by reason of varying rules in the different states would disappear.

F. J. GOODNOW.

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COLONIAL APPEALS TO THE PRIVY COUNCIL. II

IN the preceding portion of this paper,[1] the rules governing appeals from the North American colonies to the king in council were stated, as set forth in orders in council, colonial charters and acts of colonial legislatures. Denials of the right of appeal were then examined. The following pages deal with obstruction of appeals by hostile legislation, by evasion and by disregard of decisions; procedure on appeal; and cases carried to the Privy Council in which the validity of colonial enactments was subjected to judicial determination.

In general, colonial statutes were not inimical to the principles of the appellate system, and they apparently never went to the extremity of denying the right of appeal. The nearest approach to an attempt at legislative obstruction is to be found in acts passed by the General Court of Massachusetts. The charter of 1691 provided that "personal actions" were appealable to the king in council and did not mention any other kinds. The fair presumption seemed to be that other classes of actions were not subject to appeal. Willingly assuming this interpretation, the General Court in November, 1692, passed an act for establishing judicatories, which repeated the charter phraseology of "personal actions" and added the words: "(and no others)." This act was thereupon disallowed by the Privy Council, on the ground that it perverted the meaning of the charter. Acts of 1693 and 1697, containing a similar wording, met a like fate; and finally the law of 1699 omitted all reference to appeals.[2] Apparently no further attempts were made by the General Court to give statutory force to their interpretation of the charter. However, agitation still continued, and the Massachusetts courts repeatedly denied appeals to the king in council, presumably on the ground that they were other than personal actions. As late as 1743, the

[1] POLITICAL SCIENCE QUARTERLY, vol. xxviii, pp. 279–297.

[2] Acts and Resolves, I, 72–76, 144–45, 283–87, 248–49, 367–75.

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General Court presented a petition to the Privy Council, praying that judgments given in courts of the province upon any real or mixed actions might be final and that no appeals be allowed to the king in council therefrom; but nothing came of the petition.[1]

Cases of evasion were not infrequent. According to a representation sent to the Board of Trade in 1715 by the king's orders, it was averred that "in many cases where . . . Governors ought to allow appeals, they frequently refuse them, pretending that the Land, Estate or Negro Slaves sued for are not of the value of £500, tho' they are worth much more." In such cases, the representation continued, appeals could be made to the king in council by petition, but this subjected the petitioners "to two or three long Voyages, with great hazard, expense and loss of time, before they can obtain Justice."[2] This statement was made in reference to the insular as well as to the continental colonies, but it was probably as true of the one set as of the other. Mr. H. D. Hazeltine finds, after studying the situation in Rhode Island, that

> without doubt, the power assumed by the Assembly of chancerizing or mitigating the damages assessed by other colonial courts enabled that body to evade in some cases the necessity of allowing an appeal from its decision. If the Assembly anticipated that an appeal might be demanded from its decision, it could chancerize the damages to a point below the sum required for an appeal to the King in Council.[3]

But without an exhaustive study of abundant source material, it would be difficult to say how widespread this practice was.

Of neglect to give effect to the decisions of the King in Council, the published records of the Privy Council show very few examples. A conspicuous instance was the appeal of Leighton *v.* Frost from the superior and inferior courts of Massachusetts Bay in 1735.[4] The case involved a bitter con-

[1] Acts of the Privy Council, III, no. 581.

[2] N. C. Colonial Records, II, 161.

[3] Report of the American Historical Association, 1894, p. 336.

[4] Acts of the Privy Council, III, No. 345. For a fuller account, based on the

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troversy between William Leighton, who was employed to fell trees upon public lands for use in the royal navy, and John Frost who charged that Leighton had cut down trees on land owned by him and had thus violated a law of the province. The Massachusetts courts declared against Leighton, awarded damages against him and refused him the right of appeal to the king in council. Leighton petitioned the Privy Council for the privilege; on July 9, 1735, his petition was granted; and on April 29 of the following year the king in council rendered a decision, reversing the judgments of the Massachusetts courts, and ordered that the money which the appellant had paid should be restored to him and directed a new trial, under certain specified circumstances, with the liberty of a second appeal to England.

In September, 1736, Leighton's attorney produced the order before the Superior Court of Massachusetts where it was publicly read and ordered to be recorded. After delaying for two years upon various pretexts, the court declared in June, 1738, that it had no authority to give an order for an execution against the appellee (Frost), for such would be contrary to the charter, the laws of the province and the constant usage of the court. Leighton thereupon applied to Governor Belcher for

court records of Massachusetts, see Davis, A. McF., "The Case of Frost *vs.* Leighton," *American Historical Review*, II, 229–240.

Another instance, which aroused considerable interest at the time, was the refusal of the superior court of Rhode Island to carry out the orders in council in the two appeals of J., T., and S. Freebody *v.* J. Brenton *et al.;* Acts of the Privy Council, V, no. 14; VI, nos. 871, 876. In these cases, the superior court in March, 1771, gave judgment against the orders in council of April 14, 1769. In spite of complaints made to the Privy Council, there is record as late as July 6, 1774, that the orders had not been executed. This defiant attitude of the Rhode Island courts in the pre-revolutionary period is also reflected in a letter of December 22, 1767, written by George Rome, of London, who was sojourning in the colony in order to collect numerous debts owing to British merchants. Referring to the Rhode Island courts, he laments: "We have appeal'd to his majesty in council for redress, got their verdicts reversed, and obtain'd the King's decrees for our money, but *that is all;* for altho' I have had them by me above twelve months, and employed two eminent lawyers to enforce them into execution conformable to the colony law, yet we have not been able to recover a single shilling, tho' we have danced after their courts and assembly's above thirty days, *in vain* to accomplish that purpose only;" *Boston Evening Post*, June 28, 1773.

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enforcement of the order in council; but in September Belcher declared, after conference with his council, that since the superior court had refused to act and no application had been made to him until after the decision of the superior court, it was not proper for him to do anything in the matter. Leighton now sought redress of the Privy Council. After due deliberation in committee, the Privy Council on March 22, 1739, directed that the order in council of April 29, 1739, be "forthwith and without delay carried into execution;" that Frost should immediately restore the money paid to him, and that the superior court should "take the necessary Steps to Compell him thereto." The inferior court was also required to pay "due Obedience" to the earlier order in council as well as the present one; and the governor was ordered to support the royal authority and "to cause every particular herein contained to be without delay duly and punctually complyed with."

This peremptory order apparently afforded little opportunity for evasion; yet the superior court in passing upon the matter on June 26 felt no compunctions in declaring: "That they have no authority by any Law of the province or usage of this Court to order such an Execution. And the Provision made in the Royal Charter respecting appeals to his Majesty in Council does not, as they apprehend, warrant any such Execution." Here the matter is lost sight of until March, 1743, when David Dunbar, surveyor-general of his majesty's woods in America, presented to the Privy Council a memorial which set forth that the order in behalf of Leighton had not yet been executed. Dunbar apprehended that if an order in council should be immediately sent to Governor Shirley, the present executive, to enforce the former order it would "have so good an effect as to deter others from attempts of the like kind." In line with this suggestion, on June 21, 1743, the clerk of the council addressed a letter to Shirley, inclosing copies of the two former orders, with instructions that "in case the said Orders have not been already carried into Execution, the same to be Complyed with forthwith and without further delay." He was further ordered to keep the king in council informed as to the progress of affairs.

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Therewith, the matter disappeared from the Privy Council records. More than seven years had elapsed since the original order in council, and no efforts had been made by the Massachusetts authorities to execute the decree. As a result of laxity in enforcement, the enactment of the king in council had been nullified and the judgment of the provincial courts made supreme. This case, however, is not to be regarded as typical. It was only in isolated instances that such disregard of decisions impaired the efficiency of the appellate system.

III

The general lines of the appellate system have been indicated; its actual and intimate working remains to be considered. In order to make the description complete, the features of many different appeals have been assembled.

A litigant, dissatisfied with the decision of the colonial court, might request of the court an appeal to the king in council. If permission for an appeal were granted, the appellant was free to prosecute his appeal before the Privy Council, in the manner to be described later. If such permission were denied by the colonial court, he petitioned the Privy Council that his appeal be admitted and heard. The Privy Council, after reference to the Committee for Appeals (or "the Committee"), usually granted such a petition; in some cases this was done even when the one-year period, allowed for making appeals, had elapsed[1] or when the necessary minimum value was not involved in the case.[2] An appeal might also be provisionally admitted, if "the Governor and Council there have no other legal objection thereto."[3] The Privy Council rejected the petition on such grounds as the following: the sum involved was less than £300;[4] the petitioners had not "applied for a review" in the colony;[5] the proceedings in the colonial courts were erroneous and illegal.[6] After an appeal was admitted, the Privy Council referred it to the Committee for Appeals, who upon occasion directed the colonial court to transmit copies of all the proceedings[7] and, in

[1] Acts of the Privy Council, II, no. 1019. [2] *Ibid.* III, no. 345.
[3] *Ibid.* II, no. 1019. [4] *Ibid.* II, no. 990. [5] *Ibid.* II, no. 1270.
[6] *Ibid.* II, no. 1298. [7] *Ibid.* II, nos. 875, 1146, 1301.

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some cases, their reasons for refusing to admit the appeal.[1] In addition (as in a Massachusetts case), the colonial governor might be ordered to see that "all Persons be permitted without Interruption to give Evidence, or discouragement to any to give their Testimony in behalfe of the Appellant."[2]

When the proceedings had been duly transmitted, the appellant petitioned the Council for "a short day" for hearing his appeal. Upon receiving this petition, the Council referred it to the Committee for Appeals, who fixed a date for examining the case. Upon hearing the case, the Committee reported back to the Council, who, any time within a month or five weeks or less, invariably accepted the report and enacted it, with the assent of the sovereign, in the form of an order in council. This order in council might affirm the colonial decision or reverse it or vary it, and was usually accompanied with an award of costs against the unsuccessful litigant. An order in council might dismiss an appeal because the petitioner had not appealed from the inferior court within the time limit,[3] or because the counsel for the appellant refused to offer further evidence when certain of his evidence was ruled out[4] or for other reasons. The orders, reversing or varying a colonial decision, were frequently accompanied with permission or instructions for a retrial.[5]

If, after the Privy Council had admitted an appeal, such appeal were not prosecuted within twelve months' time, it might be, and frequently was, dismissed for non-prosecution.[6] On the other hand, if the appellee failed to enter an appearance within a year after the appeal was in the hands of the Privy Council, the appellant could secure a hearing *ex parte*. A warning, requiring all persons to attend, was first given by "a summons sent upon the Exchange" or other suitable place, such as, in one case, the Maryland Coffee House,[7] in another, the abode of the appellee in Christchurch parish, South Caro-

[1] Acts of the Privy Council, II, nos. 913, 990. [2] *Ibid.* II, nos. 480, 734.
[3] *Ibid.* II, no. 716. [4] *Ibid.* III, nos. 414, 428.
[5] *Ibid.* III, nos. 390, 391, 487, 527; IV, nos. 190, 263.
[6] *Ibid.* III, nos. 27, 442. [7] *Ibid.* II, no. 1339.

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lina.[1] In either case, it was usual to mulct the unsuccessful litigant in a small sum as costs. Delays were frequently caused by parties professing to be unprepared or by the failure of counsel to appear; and in these cases, too, costs were sometimes awarded, and in especially glaring instances, a date was "peremptorily" fixed for the postponed hearing.[2]

In the eighteenth century, the effective nucleus of the Privy Council for the adjudication of appeals is spoken of by the Privy Council records as "the Committee for Appeals" until 1734 or 1735, after which it is referred to simply as "the Committee."[3] The first order regulating the make-up of this committee was that of December 10, 1696, which provided that all appeals from the plantations should be heard, as formerly, by a committee which should make a report thereon to the king in council. Such committee should be composed of all the members of the Council or any three or more of them.[4] Later orders in council of 1727 and 1761 repeated substantially the regulation of 1696.[5] Evidently, then, the membership of the committee was an unstable one, varying according to circumstances from a body of three to a committee of the whole.

An order in council of September 20, 1727, declared that in prize cases a committee of a similar make-up should hear appeals either from the courts of admiralty of Great Britain or from those of the American plantations.[6] An order of November 23, 1761, however, specified that this committee should be composed of "all the Lords and others of His Majestys most Honourable Privy Council, The Chief Baron of His Majestys Court of Exchequer, the Justices of His Majestys Courts of King's Bench and Common Pleas, and the Barons of the Court of Exchequer . . . or any three of them."[7] It seems probable

[1] Acts of the Privy Council, IV, no. 150.

[2] *Ibid.* II, no. 1256.

[3] Previous to 1696, before the appellate function of the Privy Council became so clearly differentiated, the organ of the Council for hearing colonial appeals may be best followed in Professor C. M. Andrews's careful study, "British Committees, Commissions, and Councils of Trade and Plantations, 1622-75" (J. H. U. Studies, XXVI, nos. 1-3); and in the Acts of the Privy Council, I and II, *passim*.

[4] Acts of the Privy Council, II, no. 657.

[5] *Ibid.* III, no. 124; IV, no. 448.

[6] *Ibid.* III, no. 124.

[7] *Ibid.* IV, no. 461.

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that a committee of similar make-up heard appeals from the plantations, whether the appeals concerned prizes or not.

No description is at hand of the manner in which appeal cases were heard by the Privy Council committee; but the procedure was no doubt much the same as now prevails in England. Various regulations of the procedure may be found scattered through the Privy Council records; these were designed for the most part to make the hearing of cases as expeditious as possible.[1]

IV

Three of the cases which reached the king in council from the colonial courts involved the validity of colonial statutes.

The first case was that of Winthrop *v.* Lechmere.[2] In November, 1692, Massachusetts passed an act for the settlement and distribution of the estates of intestates. In 1699, Connecticut enacted a somewhat similar law, according to the provisions of which the real estate of an intestate was divided equally among his children, except that a double portion was given to the eldest son. These laws sanctioned a custom which had prevailed in New England from the earliest times, but they were at variance with the English common law, according to which the eldest son was the sole heir and was entitled to the whole estate exclusive of all the other children. In 1717, General Wait Winthrop, son of Governor John Winthrop of Connecticut, died intestate, leaving two children: John Winthrop, and Ann, the wife of Thomas Lechmere of Boston, the respondent in the appeal. The landed estates of the decedent in Connecticut were large; and on February 21, 1718, the administration of them was committed to John Winthrop. Winthrop claimed all the real estate as his own, holding that he was

[1] Macqueen, Appellate Jurisdiction, p. 804; Acts of the Privy Council, III, Nos. 142, 228; IV, No. 23; V, No. 297.

[2] Talcott Papers, in Conn. Historical Society Collections, IV and V, *passim;* Winthrop Papers, part vi, in 6 Mass. Historical Society Collections, V, 367–370, 423–428, 436–511; Conn. Colonial Records, VII, 20, 43, 122, 185, 191, 254, 571–579; 2 Mass. Historical Society Proceedings, VIII, 125–137; Acts of the Privy Council, III, No. 112; VI, nos. 367, 410, 431, 432; Chalmers, Opinions, pp. 341–42; C. M. Andrews, "The Connecticut Intestacy Law," *Yale Review*, III, 261–294.

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General Winthrop's sole heir under the common law of England, and that the Connecticut statute of 1699, by which he would be entitled to two-thirds and his sister to one-third of the estate, was invalid because contrary to the law of the superior dominion.

Winthrop continued to hold the entire estate; and in July, 1724, Thomas Lechmere, the husband of Winthrop's sister, applied to the court of probate of Connecticut, claiming for his wife a proportion of the real estate left by General Winthrop. After nearly two years of litigation in the courts of the colony, the superior court on March 22, 1726, caused the letters of administration granted to Winthrop to be vacated and appointed Lechmere and his wife administrators of the estate. Winthrop prayed for an appeal to the king in council, but his petition was denied. At the next session of the General Assembly, he presented a memorial to that body and declared that he would appeal to the king in council. His petition being peremptorily dismissed by the Assembly, he entered a vigorous protest; and, in accordance with his threats, he presented his case to the king in council by petition, claiming that the Connecticut law was contrary to the common law of England and to the colonial charter. In February, 1727, his appeal was admitted, and in December the case was tried before the Committee for Appeals. On February 13, 1728, a decree, issued by the king in council, declared the Connecticut statute null and void because it was "contrary to the laws of England . . . and not warranted by the charter of that colony," and reversed the decisions of the Connecticut courts, thereby giving the whole of the real estate to John Winthrop.

Disrupting, as it did, the agrarian system which had prevailed in Connecticut from the beginning of its history, and thus affecting every person in the colony, the order caused great alarm.[1]

[1] On June 29, 1731, Governor Talcott, of Connecticut, wrote to Wilks, the new agent for the colony in London, that no intestate estate had been settled since the promulgation of the royal decree, "tho' many orphans and fatherless children groan under it, and the whole Government, with all possible submission and patience, have been waiting, as in hope of a gracious answer from the Crown." Conn. Hist. Soc. Colls., IV, 235.

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But not alone in Connecticut was there consternation at this sudden unsettling of established conditions. Other New England colonies, with intestate laws and practices similar to those of Connecticut, did not know how soon their systems also would be subverted by the home government. The issues presented by this case were so important to all of the colonists that the government of Connecticut at once made active and determined efforts to secure a reversal of the decision.

While negotiations were yet pending for effecting this end, a Massachusetts case, similar to Winthrop *v.* Lechmere, was carried to the king in council. This was the case of Phillips *v.* Savage.[1] In 1729, Henry Phillips of Boston died intestate, survived by his mother, one brother, two sisters (one the wife of Habijah Savage and the other the wife of Arthur Savage), and the children of a deceased sister. Administration on his estate, appraised at £3950, was granted on July 17, 1730, to his brother, Gillam Phillips. On May 15, 1733, the judge of probate of Suffolk county confirmed in probate court the action of a board of referees in making a partition of the estate in five equal shares among the mother, brother, sisters and deceased sister's children, the latter taking their mother's share. On October 18, 1733, Gillam Phillips appealed to the governor and council from the decree of the probate court, which he insisted was wrong because he, as the only brother of the deceased, was sole heir according to the common law of England. On November 2, the case was heard before the governor and council, and this tribunal upheld the decree of the judge of probate. In the following November, Phillips petitioned the governor and council for leave to appeal to the king in council, but the petition was denied. However, an order in council of February 12, 1734, permitted him to appeal from the various judgments of the provincial courts; and the case was tried before the Committee for Appeals of the Privy Council on January 13 and 16, 1738. Although the appellant was represented by the distinguished Sir Dudley Rider (afterwards lord chief justice of Eng-

[1] Mass. Hist. Soc. Procs., 1860–62, pp. 64-80, 165–71; Acts of the Privy Council, III, no. 322; I Mass. Hist. Soc. Procs., XIII, 100–03.

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land and the immediate predecessor of Lord Mansfield) and a lesser associate, John Brown, and although the case of Winthrop *v.* Lechmere was quoted as a precedent, the king in council on February 15, 1738, issued an order upholding the decrees of the Massachusetts courts and dismissing the appeal. The respondents had been ably represented by Sir John Strange, afterwards master of the rolls, and Jonathan Belcher, son of the governor of Massachusetts and a Harvard graduate.

The question at issue in both of these cases was identical—the validity of the colonial statute—and there can be no doubt that the laws respecting intestate estates in both Connecticut and Massachusetts were contrary to the common law of the realm. But the king in council decided differently in the two cases. The reason for this apparent change of front lay in the circumstance that the Massachusetts law in question, together with an amendment passed the same year, had been affirmed by an order in council of 1695; and this fact, which would have been sufficient in itself, was reinforced by the fact that several explanatory acts, of 1710, 1715 and 1719, had not been disallowed by the crown and that a supplementary act, passed as late as 1731, had received the royal confirmation. The charter of 1691 provided that a law, not disallowed within three years after passage, should continue in full force until its expiration or its withdrawal by the General Assembly. Thus, this provision of the charter placed the intestacy law out of reach of an order in council, which was of a legal value inferior to the royal charter. In the case of Connecticut, whose laws did not come before the crown for approval or disallowance, and whose charter expressly declared that no laws of the colony should be "contrary to the laws of . . . England," the Privy Council was unembarrassed by any previous confirmation of the law in question. This difference in the situation of the two colonies accounts for the difference in the decisions.

The decision of the king in council in the Massachusetts case greatly encouraged the people of Connecticut in their efforts to secure the reëstablishment of their intestacy law. Ever since the Winthrop *v.* Lechmere decision, strenuous efforts had been made by petition to the home government to secure the reëstab-

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lishment of the law, or at least the confirmation of what had been done by the probate courts prior to Winthrop's appeal. The Connecticut case had been a private one and the colony had not been heard in the matter. There can be little doubt that the respondent, Lechmere, was inadequately defended, that his evidence was far from complete and his purse far from full. Winthrop, on the other hand, was ably represented by Attorney-General Yorke and Solicitor-General Talbot.

The opportunity of presenting the law to the king in council for a second judgment upon its validity came in another private appeal case, Clark *v.* Tousey.[1] In 1737, Samuel Clark of Milford appealed to the king in council for the recovery of certain lands in Connecticut, which he demanded as heir at law according to the English laws of descent but which, in accordance with the legal procedure of the colony, had been settled upon himself, together with Thomas Tousey, of Newtown, and Hannah, his wife, and four other defendants. The order in council of May 25, 1738, admitting the appeal, failed to reach Clark, and thus he did not prosecute his appeal within the time limit. Meanwhile he continued litigation in the Connecticut courts, but without success; and on May 17, 1742, a second petition for appeal to the king in council was granted by that tribunal. In the same month, the appellee, Tousey, appeared before the Connecticut General Assembly and stated that he was obliged to go to England to defend his suit. "Considering that almost all the inheritances in this Colony are dependent upon the settlement of intestate estates according to our ancient laws and customs, which, if they should be overruled and made void, would reduce the inhabitants to the utmost ruin and confusion," the Assembly voted that the sum of £500 should be loaned to Tousey to aid him in the suit.[2] In the following October, Eliakim Palmer, the colonial agent, was instructed to employ solicitors in Tousey's defense and to assist further in any way possible.

[1] Conn. Colonial Records, VIII, 283, 506–507; IX, 587–593; Conn. Historical Society Collections, IV and V, *passim;* Acts of the Privy Council, III, no. 422; C. M. Andrews, "The Connecticut Intestacy Law," *Yale Review*, III, 261–294.

[2] Conn. Colonial Records, VIII, 463.

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As a result of personal pressure and of a recognition of the injustice of enforcing the customary law of one country on another country, where the agrarian and economic life had brought into existence a customary law very different, the king in council was finally induced to render a decision which was probably based more largely on political grounds than upon purely legal considerations. One especially potent argument, which was pressed from Connecticut again and again in correspondence with the home government, was the assurance that, if so many people in the colony were dispossessed of lands, the younger sons from sheer necessity would turn to trade and manufacturing, or otherwise be obliged to leave the country.[1] These combined efforts to secure a reversal of the Privy Council's former decision were successful. Clark's appeal was dismissed by an order in council of July 18, 1745, and the validity of the act of 1699 was finally established.

It should be noted that these cases were not considered of great constitutional importance at the time. In the popular mind, the power exercised by the king in council through the medium of these private appeal cases was closely allied to the power of that tribunal to disallow colonial statutes. The chief solicitude of the colonists lay in the fact that the disallowance of their land laws would entail "ruin and confusion." The attorneys for Savage, in Phillips *v.* Savage, impliedly conceded in their argument that the king in council had the right to deny judicially the validity of a provincial statute, but they argued that the law in question had been placed beyond the crown's reach by an earlier confirmation. Even in the Connecticut cases, the constitutional question of interest to the present-day student of law was obscured by two other constitutional questions; for Connecticut's opposition to the appellant, Winthrop, was based principally upon her *general* disinclination to recognize the appellate jurisdiction of the king in council and upon her unwillingness to have *any* of her laws acted upon by the home government. Her acquiescence in the Winthrop *v.* Lechmere decision, though under protest, was an acknowledgement

[1] Conn. Historical Society Collections, IV, 123, 147, 189; V, 245–248.

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of the power of the king in council judicially to disallow her laws; and the colony did not regain her peace of mind until the same agency which had set aside her law, *i. e.*, an order in council in a private appeal case, had established its validity.

Besides the three cases mentioned, there may have been others of a similar character which the imperfect entries in the Privy Council records fail to disclose. Certain it is that the principle involved received a more or less general acceptance during colonial times; and as late as August 19, 1760, it was expressly enunciated by the law officers of the crown.[1] In an opinion rendered by Attorney-General Pratt (afterwards Lord Camden) and Solicitor-General York on the crown's power of disallowing laws, it was declared that there may be laws

> in which particular provisions may be void *ab initio* though other parts of the law may be valid, as in clauses where any act of Parliament may be contraversed or any legal right of a private subject bound without his consent. These are cases the decision of which does not depend upon the exercise of a discretionary prerogative, but may arise judicially and must be determined by general rules of law and the constitution of England. And upon this ground it is, that in some instances whole acts of assemblies have been declared void in the courts of Westminster Hall and by His Majesty in Council upon appeals from the plantations.

An examination of the appeals mentioned in the Privy Council records and elsewhere brings to light some interesting facts, although the fragmentary character of the entries and the frequent neglect of the clerks to include important data leave open to question any conclusions based upon these facts. Between 1680 and 1780, the most significant period of the operation of the appellate system, 265 cases reached the Privy Council from the continental colonies of England.[2] This was an average of

[1] Statutes at Large of Pennsylvania, V, 735–737.

[2] Prior to 1680 it is often difficult to distinguish between an appeal in the technical sense of the term and an appeal in the sense of a petition. From early days, there was a close judicial connection between Virginia and the home government. Frequent petitions for justice were presented by aggrieved parties to the Privy Council, before all possible remedies had been sought in the colonial courts. Thereupon, an order in council would "will and require" the governor and council of Virginia to

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five appeals for every two years. The greatest number of cases, 78, came from Rhode Island; Virginia was next, with 53; Massachusetts was third, with 44; and New York fourth, with 21. From Maryland 15 cases were appealed; from Pennsylvania, 13; from New Jersey and New Hampshire, 12 each; and from Connecticut, 9. North Carolina, South Carolina, Georgia and the Lower Counties were represented by only two appeals each. In the course of the eighteenth century there was a perceptible increase, year by year, in the number of appeals; but this increase was apparently not out of proportion to the growth of population. Of the total number of 265 appeals, 50 were admitted by the Privy Council upon petition. In other words, in nearly one-fifth of the total number of appeals, the colonial courts had refused the liberty of appeal to the aggrieved party.

An effort has been made to ascertain whether, as is commonly alleged, the value of the appellate system was seriously impaired by the length of time which was required to obtain from the king in council the determination of appealed cases. For this purpose 140 cases were selected at random, dismissals for non-prosecution not being included. The significant time measurement was deemed to be the interval between the first

direct their attention to the matter and to expedite justice as far as possible. There were also a number of cases carried to the king in council by persons whose property had been confiscated by arbitrary act of Governor Berkeley on charge of participation in Bacon's rebellion. Including this latter type of cases, there were, prior to 1680, apparently only fourteen appeals to the king in council: eleven from Virginia, three of which came before the Council as early as 1639; one from Maryland, 1668; one from Massachusetts Bay, 1678, and one from Rhode Island, 1679. After the year 1776, the only case appealed to the Privy Council was one from South Carolina in 1782.

As noted elsewhere, this study refers only to the colonies that later composed the original United States. From the other North American continental possessions of Great Britain, the first appeal was taken in 1708, from Newfoundland. In the years following, to the end of 1783, only twenty-six appeals reached the Privy Council, and these cases possessed no unusual features. Nine were appealed from Quebec; nine from Nova Scotia; four from Newfoundland; three from West Florida and one from East Florida. Fourteen of the cases originated in vice admiralty courts. Nine appeals received no recorded adjudication; two appeals were dismissed for non-prosecution; and one judgment was apparently never executed. Five appeals were heard *ex parte*.

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appearance of an appeal upon the Council records and the issue of an order disposing of the case. The average for the 140 appeals was twenty-two months, which compares favorably with the record of the United States Supreme Court.[1] More than one-third (49) of the cases were adjusted in a year or less; three appeals required more than six years, one of them taking almost twelve years. Dismissal of appeals for non-prosecution was found to occur within three months after the petition for such dismissal was filed.

A little less than one-half (126) of the total number of appeals resulted from litigation over real estate. This proportion was to be expected in a new country where the titles to land were not yet definitively settled. Approximately one-fifth (57) of the appeals arose from suits for accounts, debts and the like. One-seventh (38) of the appeals involved infractions of the Acts of Navigation and Trade or arose from the adjudication of prize cases. The rest of the appeals were of a miscellaneous character. By far the greater proportion of the cases appealed were cases of private law and involved nothing but private rights.

The king in council reversed the colonial courts 76 times and affirmed their decisions 57 times. From these figures it would seem that the king in council acted impartially and that the appellant could not rely upon any presumptive bias of that tribunal against colonial decisions. In 77 cases no decision is recorded; 45 cases were discharged for non-prosecution. Only eleven appeals are noted in the records as having been heard *ex parte*.

[1] Professor C. M. Andrews notes some conspicuous exceptions to the average determined here. "The claim of Lord Fairfax to lands in Virginia was before the council for twelve years, the delays seemed interminable, while the expenses were correspondingly great. The Mac Sparran claim to lands in Rhode Island waited nearly sixteen years before it was finally rejected, and for eleven years it lay pigeonholed in the Privy Council office. The case of Connecticut *versus* the Mohegan Indians, which came before the council in 1704, was not finally settled in favor of the colony till 1773. Most remarkable of all, though delayed by diplomatic negotiations, was the claim of Jeronimy Clifford, whose estate in Surinam had been seized by the Dutch after the exchange of that land for New Amsterdam in 1667, and whose legal representatives were still petitioning the council in 1766, nearly a century later;" Andrews, C. M., The Colonial Period, p. 180.

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In conclusion, a few words should be said regarding the merits of the appellate system in general. The importance of the system should not be overemphasized. In the first place, the number of cases appealed was comparatively small; and the minimum amount that must be involved in order to make a case appealable tended to impair the usefulness of the system. Thus, a representation, presented in behalf of the king to the Board of Trade in 1715, declared, in reference to the English plantations in America, that the instructions of 1689 requiring a minimum value of £500

> covered the Governors and Courts from an Inspection into their conduct in all cases of less value, thereby giving them the ultimate Jurisdiction in all other cases. And whereas most of the Suites amongst them concern Traffic, and not one in fifty [is] of so great a value, their power was made absolute in all the rest. This has subjected the people to many grievous wrongs . . .[1]

Secondly, some of the colonies were much more affected than others by the appellate jurisdiction. North Carolina, South Carolina, Georgia and Delaware escaped with practically no supervision whatever. Thirdly, as has been noted, 77 of the 265 appeals disappeared from the Privy Council records undetermined, which would seem to leave but 188 appeals that were of any effectiveness. Of these 45 were discharged for non-prosecution. A liberal estimate would leave about 150 cases determined on their merits, or three in every two years. And in a few of these cases the orders in council were laxly enforced. Fourthly, the expense of prosecuting an appeal in England was a serious drawback to the usefulness of the system.

Despite these shortcomings, the appellate jurisdiction of the king in council was a valuable institution and was far more efficiently exercised than is generally represented. Its performances were beyond a doubt regarded as satisfactory; there were relatively very few colonial complaints against the system, and, in at least one instance, that of South Carolina, the provincial council and assembly petitioned the king for the privilege of

[1] N. C. Colonial Records, II, 161.

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appealing to him in council.[1] Other evidence corroborates the conclusion that the king in council was in general an unbiased tribunal of justice. The personnel of the Privy Council was strong and its procedure insured justice to both appellant and appellee. The average time necessary for the determination of an appeal was comparatively short. The frequency with which necessary documents were lost in transmission seems to be greatly overrated, for the Privy Council records note only three such instances in cases appealed from the continental colonies. On the whole, the king in council seems to have been a tribunal well adapted for the adjudication of colonial appeals. Certainly no other existing institution in England could have exercised this function more satisfactorily.

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[1] Osgood, H. L., The American Colonies in the Seventeenth Century, II, 300–301.

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THE DEVELOPMENT OF SYNDICALISM IN AMERICA

IN a general way, "syndicalism" has become familiar to American readers. It is understood to be a revolutionary labor movement, which aims at the abolition of the wage system through "direct action" culminating in the "general strike." Its activities are guided by the vision of a new society, in which the management of socialized industry will be in the hands of the workers themselves. Although defective in detail, this conception is correct enough to serve as an Ariadne thread by which to trace the evolution of the movement through the labyrinth of facts and events.

The strike fever in England a year ago and the Lawrence strike in this country awakened both England and America to a realization of the fact that a revolutionary labor movement formed part of their social life, and stimulated inquiry concerning the source from which the movement had sprung. With the naiveté of people awakening to a new fact, both Englishmen and Americans assumed that what was new to them was really new, and that what had been unknown to them had not before existed. They looked beyond themselves for the origin of the movement and thought they found it in France, whence the name had come. It did not occur to many to look into their own social past and to see whether the roots of the new growth did not lie in the soil of their own countries. The few who did make the attempt stopped half-way, satisfied to find the large ideas of the new movement lodged in the brain of some one more or less brilliant individual. These assumptions have been especially common in America. From the numerous articles on syndicalism in general and on American syndicalism in particular which have appeared during the past year, the reader would gather either that a few individuals had become inspired with a new idea, or that a number of American workingmen had suddenly decided to imitate French ideas and French methods. Yet syndicalist ideas appeared simultaneously in America and in France. Of course, there was inter-

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change of views between those whose thoughts were moving in the same direction in the two countries. But this factor was of minor importance. A proper understanding of the syndicalist tendencies in America can be attained only by examining them in the light of economic and political developments in this country. In the labor movement of America itself will be found the record of persistent gropings and of painful efforts through which American workmen slowly arrived at the ideas and ideals now known by the French name. The forces which drove American toilers to blaze new paths, to forge new weapons and to reinterpret the meaning of life in new terms were the struggles and compromises, the adversities and successes, the exultation and the despair born of conditions of life in America.

American syndicalists do not object to being described as such, but they prefer to be called "revolutionary industrial unionists," or "industrialists." This name has been coined in their own mint; it is associated with their own experiences; and it conveys differences of opinion and of emphasis which the American syndicalists are always anxious to point out when comparing themselves with the French. In fact, the term syndicalism can be applied to American industrial unionists only with the understanding that it is generic and includes variant species.

The most effective organization of American syndicalism today is the Industrial Workers of the World, with headquarters in Chicago. The I. W. W., however, does not embrace all the syndicalist groups of America. Within the last year "syndicalist leagues," similar to the Syndicalist Educational Leagues of England, have sprung up, and other groups have been formed which in all respects follow French syndicalism. These are entirely independent of the I. W. W.; they are even somewhat hostile to it. At present, however, they are insignificant rivals. The I. W. W. is the revolutionary organization most directly connected with the labor movement, outside of which syndicalism has little if any meaning. In it the revolutionary tendencies that have been developing in the American labor movement have finally found active expression, and it is this organization which today is persistently and aggressively forcing syndicalist

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ideas upon the country. It is therefore both logical and convenient to consider the development of syndicalism in America in connection with the evolution of the I. W. W.

I

The most significant facts in the history of the American labor movement between 1885 and 1900 were the decline of the Knights of Labor and the gradual rise and development of the American Federation of Labor. The struggle between the two organizations, though at times disguised, was incessant. The Knights represented a broad and correspondingly vague humanitarianism; the Federation a narrow trade-group egoism. The organization of the Knights was based on the local assembly, that is, on a geographical subdivision which seldom if ever coincided with the local limits of a trade; and the membership of each assembly, as of the entire organization, was a heterogeneous conglomeration, ill adapted to effective coöperation. The Federation, on the other hand, was comprised of trade unions, which of course were fairly homogeneous bodies.

The history of the two organizations shows that the Federation was better able to cope with the conditions of the period. In the later decades of the nineteenth century the industries of the country relied largely on the skilled workmen, whose functions were modified but not superseded by the introduction of machinery. The concentration of industrial enterprise was just beginning, and it did not affect to any considerable extent the condition of the workers in the most important trades. Under these conditions, compact trade unions, with large treasuries fed by heavy initiation fees and high dues, could contend on the whole more efficiently for higher wages and better terms than could industrial associations formed on broader lines. By the middle of the nineties the policy of the Federation had become fairly definite. It emphasized craft autonomy, or the entire independence of each trade group to shape its own destiny; it inculcated strict loyalty to contracts made with employers; it was averse to strikes and advocated conciliation and arbitration whenever possible; it was indifferent if not hostile to socialism and, in general, to any ultimate social ideal; it was opposed to

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independent political action through a separate party organization. It was to remain a loose federation of strong and independent trade groups, relying on the economic self-support and the economic self-interest of the craft unions. It was to further the interests of each group as much as possible, but without exacting too much exertion or too great sacrifices from the other groups. Following such a policy, the Federation did little, if anything, to foster the spirit of common aspiration on the part of all the workers—the spirit which the Knights of Labor so persistently emphasized in their motto: "An injury to one is the concern of all."

But while the Federation was slowly growing and its ideas and policies were taking definite form, other forces were at work in direct opposition to its tendencies. There were a number of industries in which craft unions could not be established on a secure and permanent basis, notable instances being the brewing and the mining industries. Trade unions were at a peculiar disadvantage in the brewing industry, because the brewers had been among the first employers to band themselves together in a national association—at first for protection against excessive taxation, later also for the purpose of resisting the demands of their workmen. The isolated efforts of scattered craft unions in these industries met with determined and systematic resistance from the united employers. Before long the workmen saw the situation clearly and understood that in order to win they must adopt new tactics. In 1887, at the suggestion of its national secretary, the Brewers' Union changed its name to "National Union of United Brewery Workmen of the United States" and admitted to its membership brewers, drivers, malsters, engineers and firemen—in fact all workmen employed in and around the breweries—thus adopting what later became known as the "industrial" form of organization. This organization the brewery workers retained when they joined the American Federation of Labor. Under the stress of similar conditions, the mine workers formed a similar association; and their example was soon followed by the workmen in several other industries.

With the mine workers, as with the brewery workers, the in-

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dustrial form of organization was a purely practical matter. It appeared to them a question of life or death in the economic struggle. They did not philosophize about it; they simply recognized it as necessary. But among the labor leaders were a number of individuals who perceived a larger significance in the movement. They saw in the industrial form of organization a means of breaking down the barriers between craft and craft and of bringing the workers into closer coöperation. They felt that the industrial principle could be so extended as to embrace workmen as a class and to emphasize their common interests. These persons became theoretical as well as practical defenders of the industrial union. Some of them were in the American Federation of Labor, some in the Knights of Labor, while others were members of industrial unions which had sprung up in various parts of the country and which were not affiliated with either of these bodies.

In the American Federation of Labor, which was essentially a federation of craft unions, the new industrial unions formed a disturbing element. No less antagonistic to the policy of the Federation was the socialistic movement. In the American labor movement, as in the labor movement in other countries, the socialists were active from an early period, and in America as elsewhere they aimed from the beginning to capture the unions. During the earlier stages of the movement the American socialists were organized as the Socialist Labor Party, which was steadily though slowly growing from year to year. This party represented "orthodox" Marxism. The relations between this party and the American Federation of Labor were strained from the beginning. They came to a complete break in 1891, when the convention of the Federation refused to seat Lucien Sanial, a member of the party. The socialists then tried to obtain control of the weakened Knights of Labor, but they were baffled in their efforts by the officers of that organization. In December, 1895, they launched a new labor organization, described as the "Socialist Trade and Labor Alliance," in opposition both to the Federation and to the Knights of Labor. In its constitution, adopted early in 1896, the Alliance declared itself in favor of socialism and of political action. The

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by-laws made it clear that the new organization was to work hand in hand with the Socialist Labor Party. The leaders of the Socialist Labor Party and of its annex, the Socialist Trade and Labor Alliance, were indefatigable in their criticism of the American Federation of Labor. They denounced its "narrow" spirit and called attention to its failures, which were ascribed to wrong methods and to lack of solidarity.

After a short period of growth, the Trade and Labor Alliance declined in numbers. Even after its formation a number of socialists remained members of the American Federation of Labor. These men were opposed to the trade-union policy of the Socialist Labor Party. They did not believe in organizing dual unions nor in separating from the general body of organized workingmen. Their idea was to "bore from within" until conditions should make their ideas acceptable to the majority of organized workers. Then, of course, the Federation would come to accept their point of view. These socialists within the Federation displayed no less activity than did those outside. At every convention of the Federation they introduced declarations in favor of socialism and resolutions for independent political action. Their resolutions were defeated year after year, but that did not discourage them. Whenever a big strike was lost, they pointed out that the defeat was the result of a narrow craft spirit and of a lack of solidarity among the workers. Whenever the militia interfered in a strike, they triumphantly declared that, until the workers resorted to independent political action and elected their own representatives, they would be at the mercy of the "capitalist" authorities.

Slowly indeed, but still appreciably, the propaganda of the socialists made progress. The Homestead strike in 1892, the Pullman strike in 1894 and a number of lesser strikes gave point to what they were saying. The growth of big business combinations and the concentration of economic power in the hands of a decreasing minority brought home to the workmen the fact of their industrial insecurity. The increasingly frequent use of the injunction, after the middle of the nineties, irritated them and awakened in them a feeling of bitterness toward the courts. The limitations placed upon the

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use of the boycott, the attitude of the courts toward labor legislation, the use of the Sherman Anti-Trust Act as a weapon against labor organizations and disappointing experiences with a number of politicians of the old parties—all these circumstances disposed the workmen to listen to the preachers of political action.

The forces described above were exerting their influence here and there, with more or less effect according to circumstances. But they did not result in the formation of a new type of unionism in America until they were all concentrated in certain western labor organizations, of which the Western Federation of Miners was the most important. This Federation sprang into existence in May, 1893, as a result of the disastrous strike in the Cœur D'Alene district. The idea of the organization was conceived within the walls of the county jail, where a number of the strike leaders found themselves incarcerated for their activities during the struggle. Reviewing the campaign, they discovered the cause of their failure in the lack of close ties between the various local unions. They determined to bring about a combination of all miners' unions as soon as they should be out of jail. On May 15, 1893, forty-seven delegates from various miners' locals assembled in Butte, Montana, and there laid the foundation of the Western Federation of Miners. This organization developed slowly up to 1896 but grew rapidly from 1896 to 1900. It not only welded the existing unions together in a strong central federation but it also promoted the organization of new locals. Spreading from state to state, by the end of the century it had a large following in Colorado, Montana, Nevada, Arizona and other mining states of the West.

Many circumstances combined to impart to the Western Federation of Miners that spirit which made it at the same time the bugbear of corporations and employers and the advance guard of revolutionary unionism in America. The men were pioneers, hardy and self-assertive. They had gone into the West as independent fortune-seekers. The introduction of machine processes had reduced them to the position of wage-workers. The extractive nature of the industry helped to crystallize their resentment; their hands were drawing directly from

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the earth wealth that enriched others. All these circumstances bred bitter feelings against their employers. The strikes in the mining districts of the West came nearer to real warfare than did any other contests in the history of the American labor movement. Armed bodies of strikers, fights with the state militia and with federal troops, barricades, dead and wounded, bull-pens—such has been the regular course of strikes in the mining districts of the Rockies.

Strikes carried on in this manner inevitably focussed upon one point the many influences mentioned above that were operating sporadically within the American labor movement. Facing strong and obstinate corporations, the miners could have no hope of success unless the workmen employed in and about the mines were welded into one organization and were ready to act as one man. This led the western miners to adopt the industrial form of organization and to make it the basic principle of their federation. The evident connection between the mining corporations and the state and city governments, the frequent use of the militia for the suppression of strikes and the abuse of the injunction forced the miners to turn their attention to political action along socialistic lines. Between 1896 and 1902 the Federation of Miners formulated in ever clearer terms its faith in a new unionism, industrial in form, political in method, socialistic in its ultimate aim.

The Federation of Miners gave impetus to the formation of other organizations similar in form and in character. In 1898 it helped to organize the Western Labor Union, which soon came to embrace a number of unskilled laborers, such as cooks, waiters, teamsters, brewery drivers, lumbermen *etc.* The Federation of Miners was interested in the organization of these unskilled and more or less migratory workingmen, because they could easily be and were actually used as strike-breakers by the mining corporations. The Western Labor Union kept in close touch with the Western Federation of Miners and advocated the same ideas and methods.

These new organizations kept aloof from the American Federation of Labor. From 1893 to 1896, indeed, the Western Federation of Miners had formed part of the American Feder-

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ation of Labor, but in 1896 the connection was dissolved, partly because the western miners felt that the larger federation was not giving them due support, partly because of sectional jealousies. At first the western labor organizations regarded themselves simply as instruments for promoting the interests and welfare of the workmen of the West. But after 1900 this view began to give place to a broader outlook. The success of western unionism and the interest which it excited among eastern workmen suggested the idea of a wider organization which should transcend sectional limits. This idea gained strength as the western organizations became increasingly conscious of the fact that they represented a new type of unionism, in marked opposition to the principles of the American Federation of Labor. The western organizations were especially aroused by the formation of the Civic Federation in 1901 and by the prominent rôle which some of the leaders of the American Federation of Labor were playing in this attempt to bring capital and labor into friendly relations. The western unionists felt that the time had come for them to oppose this conciliatory attitude and to rally the entire working class of America to the standard of a "class-conscious" and aggressive unionism.

The result of this feeling was the formation of the American Labor Union. This new organization was launched in 1902, at a joint conference of the Western Labor Union and the Western Federation of Miners, which were holding their annual conventions in Denver at the same time. In its constitution and by-laws, the American Labor Union embodied the ideas which had been developed by the western organizations in the previous period. It emphasized the principle of industrial organization, declared itself in favor of independent political action and endorsed the platform of the Socialist party. It represented the culmination of the development thus far described; it may be regarded as the high-water mark of that industrial unionism which was essentially political in character and socialistic in ultimate aim. It viewed socialism as an end, which could and would be brought about by the political action of the Socialist party. It regarded unions merely as an aid and supplement to the great movement towards the coöperative commonwealth.

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The American Labor Union of the West differed in essential points from the Socialist Trade and Labor Alliance of the East. The latter emphasized exclusively the necessity of rallying to the Socialist Labor party, with which it stood in the most intimate relations and to which all its members belonged. It did not press the principle of industrial unionism and was sceptical about purely economic action. The American Labor Union, on the contrary, though officially endorsing socialism, admitted workmen of various political views and enthusiastically supported them in their economic struggles. What the two organizations, situated on opposite sides of the continent, had in common was their opposition to the American Federation of Labor and their desire to build up a revolutionary labor movement.

In the West between 1902 and 1905, a broader view of the social rôle of the labor union was developed. This came, in part from the experience of the western miners, in part from the constructive thought of some of the more intelligent leaders. From this point on, the history of the movement becomes more a story of the influence of dominating personalities than it had been before.

In 1902, William D. Haywood, then secretary of the Western Federation of Miners, advanced a plan which was to enlarge the scope of union activities. He proposed that the Federation invest some of its money in mines, to be operated by its members for the benefit of the unions. The plan was very attractive and seemed quite practicable; but it was not tried because the Federation soon had a fight on its hands which engaged all its attention. Still, the proposal and the discussion which it evoked had a most stimulating effect, for they served to thrust upon the attention of the workmen the idea that in their union they had an agency that could carry on and control production for their own benefit. What had previously been an abstract conception—the ownership and control of industry by the workers—became now a simple and apparently realizable plan.

A somewhat similar influence was exerted about the same time by proposals for coöperation. At the second annual convention of the Western Labor Union, in 1899, its president,

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Daniel McDonald, urged its members to consider the possibility of productive and distributive coöperation in the West. He held up as an example the success of such undertakings in England, and emphasized the idea that coöperation might become the means of "emancipating the working class." A committee of investigation was appointed by the convention; and although no practical action followed, the discussion undoubtedly furthered socialistic ideas and sentiments among the workmen.

The influence, however, which was most effective in shaping the new conception of unionism was a purely intellectual one. The man who first formulated the conception of industrial unionism, and whose services are acknowledged by all, was Wm. E. Trautman, editor of the *Brauer-Zeitung*. Mr. Trautman was thoroughly familiar with the progress of the labor movement, and was well versed in the theory of socialism. Though his thought was guided mainly by the ideas of Marx and of German socialism in general, he was also familiar with French syndicalism, which was taking shape about this time. Combining the thoughts suggested to him by his experience in the labor movement with the general ideas of socialism, he hit upon the fundamental syndicalist idea—that the labor union was the seed which carried within itself all the socialist possibilities of the future. Though generally an obscure and awkward writer, he succeeded in formulating his idea in a fairly clear and readable article which appeared in the special Labor Day issue of the *American Labor Union Journal*, in September, 1903, under the title "The United Brewery Workers and Industrial Organization." A few sentences may be quoted:

> Socialists abroad, as well as here, perceive that the instruments for the management of the Socialist republic, now in process of formation, must be created, and they build the labor organizations according to this need. Who can judge how to regulate the required production of utilities in the various lines of industry in conformity with the necessities of the entire society better than those who are directly employed in a given industry? . . . Industrial organizations are the forerunners of the society established on Socialist foundations, and within them are

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the elements preparing for a more scientific management of the implements of production and distribution.

Once clearly formulated, the idea soon became common property. It was enthusiastically greeted and accepted by some of the most prominent leaders in the socialist and labor movements, such as Debs, Haywood and Vincent St. John. It became the theme of numerous articles in the socialist and labor press, undergoing slight variations and modifications but emerging in ever clearer form. In the period between 1902 and 1905 the new idea of revolutionary industrial unionism, which regarded the union as the growing cell of the socialist society, was firmly established in the American labor movement.

By 1904 conditions seemed to justify the attempt to unite the scattered revolutionary elements into a coherent movement. The United Brewery Workers were embittered by attacks on their industrial organization and by the threat of the American Federation of Labor to revoke their charter. Among the United Mine Workers there was dissatisfaction with the leaders of the union and with the results of the famous strike-settlement of 1902. The United Metal Workers—an industrial organization not affiliated with the American Federation of Labor—were casting about for some central labor organization which would strengthen the forces of industrial unionism. The United Brotherhood of Railway Employees, weakened by bitter struggles and by the persistent persecution suffered from the hands of the railroad companies, was anxious to renew its strength by combination with other labor organizations. The Socialist Trade and Labor Alliance in the East, though steadily losing ground, still had several thousand workmen too revolutionary for the American Federation of Labor but desirous of closer contact with the labor movement of the country. And towering above all in numbers and organization was the Western Federation of Miners, the pioneer and standard-bearer of revolutionary industrial unionism, desirous to extend its influence and to advance its cause.

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II

The feeling that the time was ripe for a new labor movement of national scope prompted a number of industrial unionists to call a conference for January 2, 1905, to discuss ways and means of launching such a movement. In the letter of invitation, which was sent to forty-two labor organizations and labor leaders, it was stated that "craft division and political ignorance were doomed to speedily end;" that the working class, "if correctly organized on both industrial and political lines, could take possession of and operate successfully for their own interest the industries of the country;" and that "working-class political expression, through the Socialist ballot, in order to be sound, must have its economic counterpart in a labor organization built as the structure of Socialist Society." The invitation to the conference was accepted by twenty-two persons; others who could not be present sent communications expressing their sympathy with its purpose.

The conference, which was in session for several days, drew up an "Industrial Unionist Manifesto"—a remarkably clear and concise document—which laid down the fundamental principle of the new movement. A committee was appointed to call a convention, and on June 27, 1905, the industrial unionists of America met in Chicago and laid the foundations of the now famous Industrial Workers of the World. The convention lasted twelve days. It was attended by 186 delegates from 34 organizations, state, district, national and local. The most important organizations represented by delegates were the Western Federation of Miners, the Socialist Trade and Labor Alliance, the American Labor Union, the United Metal Workers, the United Brotherhood of Carpenters and Joiners, the Illinois locals of the United Mine Workers of America, the Journeymen Tailors' Union, the Journeymen Tailors' Protective and Benevolent Union of San Francisco and the Punch Press Operators' Union of Schenectady. Of these organizations, not all were ready to join the new industrial union at once; some had sent delegates to watch the proceedings and to report on them. Under the rule of representation adopted by the convention such organizations were entitled to one vote only; the

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other organizations were allowed as many votes as they had members. Thus the Western Federation of Miners was allowed 27,000 votes; the American Labor Union, 16,780; the United Metal Workers, 3000; the Socialist Trade and Labor Alliance, 1450; and the Journeymen Tailors' Union of San Francisco, 400. The Western Federation of Miners controlled the situation through the overwhelming majority of votes. And this was only just, for it was the support of this organization which really gave significance and strength to the proceedings. Haywood, secretary and treasurer of the Western Federation of Miners, was elected permanent chairman of the convention.

The task before the convention was not an easy one. It had to draw up a statement of principles and purposes, to adopt a constitution and to lay the material foundations of the new organization. The difficulties of the task were enhanced by the fact, which soon became evident, that the convention was not a homogeneous body. In fact, it was made up of three distinct elements. These must be distinguished and characterized; for their differences have been perpetuated in the I. W. W., and their struggles form a large part of its history.

The most important element was probably that which regarded the organization about to be formed as the economic backbone of the political socialist movement. This element was composed of labor-unionists who had come to the conclusion that the most effective weapon in the hands of labor was the ballot, and that the only party through which the workingmen could use their political power was the Socialist party. At the time, however, this element was embarrassed by the fact that there were in existence two Socialist parties. In 1899 a number of the members of the Socialist Labor party, discontented with its policy, had seceded; and in 1901 they and others had formed the so-called Socialist party. In 1904 this new organization polled 402,283 votes, while the older Socialist Labor party polled only 31,249. Still, in 1905 the two Socialist parties were contending for supremacy in the American socialist movement, and the delegates in the Chicago convention felt that, under the circumstances, they could not endorse either.

A second element in the convention, although socialist in its

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opinion, was inclined to ascribe less importance to the political movement and to make it subordinate to the economic organization of the working class. This element consisted of the men who had developed the idea of the social rôle of the labor union, and who were guided by the vision of the socialist society evolving out of the labor unions. In the convention these men admitted the necessity of united action on the political field, but they did not care to make the new organization the tail of a political party's kite.

These two elements formed the majority in the convention and stamped it as distinctly socialistic in character. But among the delegates there were also a few anarchists, who deprecated or wholly rejected political action, and who saw the only hope of the working class in united class action in the economic field. These delegates were familiar with the revolutionary syndicalism of France, and hoped to impart to the American movement a similar character.

A convention thus divided could not well agree upon an explicit declaration of principles. The preamble which was adopted was particularly vague in its clause on political action, which was worded as follows:

> Between these two classes [the working class and the employing class] a struggle must go on until all the toilers come together on the political as well as the industrial field, and take and hold that which they produce by their labor through an economic organization of the working class without affiliation with any political party.

In general, however, the preamble emphasized the points on which the various elements in the convention were united.

> The rapid gathering of wealth and the centering of the management of industries into fewer and fewer hands make the trade unions unable to cope with the ever growing power of the employing class, because the trade unions foster a state of things which allows one set of workers to be pitted against another set of workers in wage wars. The trade unions aid the employing class to mislead the workers into the belief that the working class have interests in common with their employers.

To change these conditions the workers must have an organiza-

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tion "formed in such a way that all its members in any one industry or in all industries, if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making an injury to one an injury to all." [1]

Faith in the industrial union was clearly the rallying point of the convention. In the interpretation of this point, however, the convention was divided into several groups. Some delegates insisted that an industrial union should embrace all members using a particular tool, no matter where they happened to work. Others thought an industrial union was one which united all those who worked on a certain material; for instance, metal workers, woodworkers *etc.* Others again conceived the industrial union as a combination of all workers in a given industry, regardless of the tools handled or the materials used. The last view prevailed, and in the constitution which was adopted by the convention it was carried to an extreme. The new organization was to consist of thirteen industrial divisions, corresponding to thirteen kinds of industry, such as the division of agricultural land and water products, the division of mining, the division of building *etc.* It was claimed that these thirteen divisions correctly represented the industrial life of today and would form the basis of the industrial system of the future. The theoretical, not to say doctrinaire, character of this system is too evident to need emphasis. It reflected at once the intellectual preoccupations of its authors and the centralizing tendencies of the convention.

The desire for a highly centralized organization found expression in many other provisions of the constitution. Extensive powers were conferred upon the president. The execu-

[1] The preamble was the work of Thomas J. Hagerty, an interesting figure in the American labor movement. Hagerty was a Catholic priest of Chicago who took an interest in the labor movement and in socialism. Having obtained leave of absence, he traveled throughout the West, lecturing for labor unions and socialist organizations. He came in contact with the Western Federation of Miners and with the leaders of revolutionary industrial unionism, and was impressed by their point of view. He developed it further when he became editor of the *Voice of Labor*. He was a member of the conference which issued the call for the convention, and at the convention he was entrusted with the task of drafting the preamble. The conspicuous part played by Mr. Hagerty at the convention gave rise to the legend that he was the originator of the new ideas.

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tive board was authorized to call strikes and to approve all agreements between the constituent unions and employers. Although the unions were to manage their internal affairs, they were made "subordinate" to the president and the executive board. The control of the membership over its officers was to be exercised through the annual conventions and through the referendum, for which a complicated machinery was devised. This centralization of authority was deemed necessary in order to secure coherent and united action on the part of the American working class. The failure of the American Federation of Labor to secure such action was ascribed largely to its decentralized organization.

Besides defining the principles and determining the form of the new organization, the convention outlined some methods not in use in the American Federation of Labor. Of these, the "universal label" and the free interchange of membership cards were the most significant. The craft label, the industrial unionists claimed, instead of being used for the purpose for which it was originally intended, had degenerated in the hands of the craft unionists into a means of corruption and of advancement of capitalist interests. A trade union would sell its label to manufacturers, who would use it to drive out competitors. It was often used also as a means of destroying undesirable labor organizations. A universal label would make abuses impossible and would constantly keep before the workmen the idea of working-class solidarity.

The I. W. W., as constituted at Chicago in 1905, included the following organizations: the Western Federation of Miners, the Socialist Trade and Labor Alliance, several industrial workers' clubs of Chicago, the United Brotherhood of Railway Employees, the American Labor Union, the United Metal Workers and the Journeymen Tailors' Union of Pueblo, Colorado. Charles O. Sherman of the United Metal Workers was elected president. Wm. E. Trautman was elected secretary-treasurer. An executive board of five members was installed. Three of these, Charles H. Moyer, Frank McCabe and Charles Kirkpatrick, represented the three industrial organizations which had joined the new movement, namely, the Western Federation

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of Miners, the United Brotherhood of Railway Employees and the United Metal Workers. The two other members, elected at large, were John Riordan and F. W. Cronin of Butte, Montana.

The growth of the I. W. W. during the first year of its existence exceeded the most optimistic expectations. Including the 30,000 members of the Western Federation of Miners, it counted in the summer of 1906 about 100,000 members. It had a number of organizers in the field and a weekly paper of its own, *The Industrial Union Bulletin*. But in the summer of 1906, on the eve of its second annual convention, signs of disruption were already visible. In February, 1906, Haywood, Moyer and Pettibone of the Western Federation of Miners had been arrested on the charge of having instigated the murder of ex-Governor Steunenberg. The forced retirement of Haywood from active participation in the labor movement was a severe blow, not only to the Western Federation of Miners, but to the I. W. W. as well. Haywood had been a leading spirit in organizing the I. W. W., and the support it received from the Western Federation of Miners was due chiefly to him. His arrest weakened the element in the Western Federation of Miners which was backing the I. W. W. and brought to the front leaders who were apprehensive of the extreme tendencies of the new organization.

The struggle within the I. W. W. came to a climax at the second annual convention, which was held in September, 1906. The issue was in the main a personal one. The president, Charles O. Sherman, was accused of inefficiency, extravagance and disloyalty to the principles of industrial unionism. The convention deposed him, abolished the office of president and made a number of other changes in the constitution. Mr. Sherman refused to recognize the regularity of the proceedings of the convention and continued for a time to hold the documents and other property of the organization. He was supported in this attitude by the Western Federation of Miners. Early in 1907, however, Mr. Sherman abandoned his resistance, leaving the I. W. W. in the control of his opponents. The Western Federation of Miners, at its convention in the same year, withdrew from the I. W. W.

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This first struggle was followed by a second, which turned not so much on personalities as on principles. The declaration adopted by the constituent convention of 1905, concerning the political attitude of the working class, had been the cause of much friction. Any discussion of politics in any I. W. W. local was apt to raise the question whether the working class should favor the Socialist party or the Socialist Labor party. As the I. W. W. included members of each party, such discussions led to quarrels. Workmen who were chiefly interested in the economic functions of the organization became impatient of both factions. The anarchistic elements were of course anti-political, and they utilized the opportunity afforded by such quarrels to point out the disruptive effect of politics. Attacks upon the I. W. W. by prominent political socialists aroused resentment and drove the leaders of the movement further in the direction of opposition to politics.

In 1906 an effort was made to unite the two Socialist factions. It led to no result except an increase of suspicion and hostility. In the I. W. W. the difficulties caused by the division on politics was becoming intolerable. More and more members urged a change in the preamble which should emphasize the superior revolutionary value of the economic organization. The belief that the economic organization was supreme and all-sufficient to bring about the transformation of society grew stronger as confidence in political action diminished. The development of the non-political attitude may have been hastened at this time by the direct influence of the French syndicalists, with whom there was more or less contact and whose theory and practice were known to a number of men in the American labor movement.

The determination to put the I. W. W. on a non-political basis found expression in the convention of 1908, held at Chicago. As happens very often at conventions, the contest of principles was fought out on a personal issue—the admission of Mr. Daniel De Leon as a delegate. Mr. De Leon was the leader at once of the Socialist Labor party and of the political element in the I. W. W. By excluding him, the convention prepared the ground for a change in the preamble, which

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brought the I. W. W. a step nearer the position of French syndicalism.[1]

After the convention of 1908 it was clear that the large vision which had guided the first efforts of the industrial unionists—the vision of a united revolutionary labor movement—was not likely to be realized. The Brewery Workers had rejoined the American Federation of Labor in 1907; the Western Federation of Miners was on the road to affiliation with the same organization; the Illinois Miners had thought it wiser to stay with the United Mine Workers; the United Metal Workers proved to be a very small body, which had bolted with Mr. Sherman from the International Association of Machinists and which had no chances of growth; the Brotherhood of Railway Employees had been disorganized. The enthusiasm which the I. W. W. at first awakened had been steadily subsiding during the first two years of its existence. The revolutionary elements in the labor and socialist movements now regarded it with disappointment and distrust. The I. W. W. had shrunk to a mere handful of leaders, revolutionary in spirit and ideals and persevering in action, with a small, scattered and shifting following and an unsatisfactory administrative machinery. Clearly, if the organization was to survive, new and different methods had to be adopted.

After 1908, what was left of the I. W. W. turned its attention mainly, if not exclusively, to the industries in which un-

[1] The preamble, as amended in 1908 and in following years, reads as follows: "The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of the working people, and the few who make up the employing class have all the good things of life. Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the earth and the machinery of production and abolish the wage system."

The next two clauses were left as quoted *supra*, p. 465. The closing sentences of the amended preamble read:

"Instead of the conservative motto, 'A fair day's wages for a fair day's work,' we must inscribe on our banner the revolutionary watchword, 'Abolition of the wage system.' It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for the every-day struggle with capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old."

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skilled labor predominates. In the western states, where the field had already been ploughed by the American Labor Union, it succeeded in maintaining a considerable influence over the more or less migratory laborers engaged in railroad construction and in the lumber and fruit industries. It organized a number of important strikes—most of which were lost—and it carried on a revolutionary propaganda which often led it into bitter conflicts with the municipal authorities of the far western cities. "Free-speech fights" became frequent episodes in the activity of the Industrial Workers. They were forbidden to speak on the streets; they were arrested and imprisoned for violating the prohibition; they were often marched out of town with a hint not to return. It was during these free-speech fights that they developed their unique methods of struggle. They would march in bands of tens or of a hundred into the town in which the fight was on and get themselves arrested in order to fill the jails and tax the community. The San Diego contest was but one—though the most remarkable—of the free-speech fights which the I. W. W. has carried on. Another bitter fight for the right of free speech was fought by the I. W. W. in Spokane, Washington, in 1909.

In the East the I. W. W. had to break ground for itself, and at first its efforts met with less success. Its most important move, before the Lawrence strike, was probably the McKees Rocks strike in 1909. Here again it was active among the unorganized and unskilled—this time among the workmen in the steel plants. The strike was bitter and violent, complicated by racial animosities and aggravated by the stubborn resistance of the employers. Its success convinced the Industrial Workers that there was a field for them in the East. It was, however, the great strike in Lawrence, in the early part of 1912, which first brought the I. W. W. into national prominence. This strike revealed two things: that what has come to be known as "direct action" is especially effective in the case of unorganized and unskilled workers; and that the needs of these workers are best subserved by a new type of labor leader, who is inspired by revolutionary ideals. Besides the strikes at McKees Rocks and at Lawrence, the I. W. W. has carried on, during the past

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three or four years, a number of strikes of varying magnitude. It is hardly worth while either to recite the incidents of these strikes or to recapitulate them in statistical tables. All these strikes bear the same general character; they are mostly sporadic uprisings of unskilled workers, hardly touched by organization.

The nature of the field in which the I. W. W. has been working has accentuated the aggressive methods towards which it leaned from the beginning. A camp of railroad workers on strike cannot follow the same diplomatic and slow procedure as can, for instance, an organization of printers. The lumber workers of the South, the fruit-workers of California, the textile workers of New England or the waiters in the hotels and restaurants of a city can rely neither on trained aptitude for their tasks nor on accumulated funds nor on any other means at the command of the more skilled workers. In the case of unskilled workingmen, a strike requires a swift and decisive move, a concerted attack all along the line, disorganizing the employers' plans and plants. The aim of a strike is realized as soon as the material demands are granted. The so-called "recognition of the union" is of minor importance when the union itself is unstable. Among unskilled workmen the union exists today, but tomorrow it may disintegrate with the dispersal of the laborers. These, however, carry with them to new places and disseminate among other workmen the germs of industrial unionism. The new methods adopted by the I. W. W. after 1908 found expression in new catch-words: "no recognition of the union," "swift attacks," "brief and aggressive strikes," "no arbitration." These phrases summed up the policy which was found suitable to the conditions under which the I. W. W. had to work. The theory, as usual, sprang from the facts.

These methods, however, did not assure success at all times. All the other elements of solid organization lacking, the I. W. W. had to devise means of fighting which would not require the ordinary "sinews of war." Thus they were led to adopt the idea of the "passive strike" and of "sabotage." The leaders of course knew how the workers in other countries fought their battles; but their policies were determined mainly

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by their own experiences, and it was the difficulties of their own struggles which led them to these new methods. A detailed description of these methods would require a separate study. The passive strike may be described as striking without throwing up the job. It consists of annoying the employer in all ways possible and in making it unprofitable for him to continue to refuse the demands of the workers. It is the initial form of sabotage, which, in its most acute form, may express itself in violent action.

While developing these methods, the I. W. W. formulated in ever clearer terms its social ideal and its conception of the social revolution. These were in large measure determined by the relations between the new movement and the Socialist party. After 1906 the political socialists began to antagonize the I. W. W. and became more favorable than ever towards the American Federation of Labor. A calmer and more generally accepted presentation of socialist aims and methods was in part the result and in part the cause of the increase in the Socialist vote and of the successes achieved by the Socialist party in the elections of 1908 and 1910. In opposition to this tamer socialism, the I. W. W. not only advocated revolutionary methods but emphasized in ever stronger terms its own conception of social evolution, according to which the industrial unions carried within themselves all the elements of the socialist society of the future. They minimized the importance of political organization and action and declared their faith in the economic organizations of the workmen, which at some future time would lock-out the capitalist class and assume the control and management of the industries of the country.

Thus in the interval between 1908 and 1912 the tendencies of revolutionary industrial unionism, first outlined in the organizations of western workmen, assumed increasingly definite form. When the Lawrence strike broke out and the I. W. W. commanded public attention, what struck almost all observers was the marked contrast between the socialism of the Socialist party, represented by such men as Victor Berger, Morris Hillquit and John Spargo, and the "industrial socialism" of the I. W. W., represented by such men as William D. Hay-

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wood, J. J. Ettor, Giovanetti and Vincent St. John. Yet many of the Industrial Workers were members of the Socialist party; W. D. Haywood, indeed, was at that time a member of the national executive committee of the party.[1] This relation seemed rather strange. It is explained by the mixed character of the socialist movement, which in America as in other countries, attracts to the Socialist party people of all social classes, of varied social, moral and intellectual associations.

At present the situation is the same: there are still members of the Socialist party who belong to the I. W. W., and there are other members who agree in many respects with its views and who recognize the necessity of such an organization. In the Socialist party these men are described as "Industrial Socialists." They are bitterly opposed to the flirtation between their party and the American Federation of Labor. At the same time they are strongly convinced of the usefulness of political action and they try to coax the I. W. W. into a more friendly relationship with the political activities of the Socialist party. Some leading spirits of the I. W. W., however, regard the Industrial Socialists with suspicion as a faction within the Socialist party which is trying to use the industrial labor movement for the purpose of gaining control of that party. The constitution of the I. W. W., it is true, is not anti-political—it is merely non-political. The I. W. W. admits any workman regardless of creed, race or political opinion. But it is also true that the Industrial Workers have played and are playing the game of anti-politics. Their spokesmen ridicule the "politicians," severely criticize the Socialist party and insult its most prominent leaders. The non-political position of the I. W. W. is therefore practically anti-political.

This anti-political attitude has developed mainly as a result of friction with individual socialists and with the Socialist party. The present leaders of the I. W. W. have been recruited mainly from the ranks of the socialists. Their development towards their new position has been a gradual drifting away from the recognized political point of view. But they have not gone to

[1] Haywood has since been recalled from this position by a party referendum.

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the extreme of anarchism. They have gone only half-way, rejecting both "doctrinaire" socialism and "doctrinaire" anarchism and proceeding on the basis of the belief that a strong militant industrial organization will prove sufficient to overthrow capitalistic society and to establish a new industrial society.

This element, which is predominant in the I. W. W., gains considerable support from the numerous anarchists who have joined the organization during the past few years. In the Far West and in the East many of the I. W. W. locals are dominated by anarchistic elements, who have come to regard the I. W. W. as the most promising agency for revolutionary propaganda and action. Though "doctrinaire" in their social ideas and disagreeing in some respects with the pure industrial unionists, the anarchists undoubtedly help to impart to the I. W. W. its present character.

III

The revolutionary aspects of the I. W. W. have given rise to the belief that its policies are simply an imitation of those of French syndicalism. It is true that since 1908 the contact of American industrial unionists with French syndicalists has been quite direct. In 1908 W. D. Haywood went abroad and came into intimate connection with the leaders of the General Confederation of Labor (*Confédération Generale du Travail*), as did also a number of others more or less active in the American labor movement. The French syndicalists have, indeed, claimed Haywood and others as their pupils. But this is an exaggeration. As has been shown above, revolutionary industrial unionism represented by the I. W. W. grew up on American soil. The intellectual influence of France, though a factor, was of subordinate importance. That is why the American and French movements, though agreeing in fundamentals, differ in some significant aspects.

The points of agreement between the French and American forms of syndicalism need not be dwelt upon. They are quite evident. The conception of the social rôle of the labor union, the idea of the "general strike," the emphasis upon direct action as opposed to political action, the revolutionary spirit—these

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are elements common to both. The points of disagreement, however, merit fuller consideration, because they help us to appreciate the difference between French and American conditions.

The French revolutionary syndicalists do not believe in forming a separate organization, composed exclusively of their own partisans. They adhere to the General Federation of Labor, the central labor organization of France, to which all the important national and international unions of the country belong. In consequence of this fact, the General Confederation of Labor is composed of several elements, of which the revolutionary syndicalists form one. The syndicalists of course hope to bring all other elements in the labor movement to their point of view; but, meanwhile, though they are the leading element in the General Confederation, they are confronted with a strong opposition within the organization.

The I. W. W., on the other hand, is a separate organization, and it does not believe in the advisability of merging with the American Federation of Labor. The I. W. W. can and does, therefore, insist upon adherence to its revolutionary program, though it cannot suppress differences of interpretation. The attitude of the I. W. W. is the result of the fact that it entered the field after the American Federation of Labor had developed into a large and strong organization. The existence of sectionalism in the American labor movement encouraged the independent development of the western organizations, which laid the foundation of the I. W. W., but every move on the part of the revolutionists to influence the policy of the American Federation of Labor has met with crushing defeat. French syndicalism, on the contrary, appeared on the stage at a time when the French *syndicats* were just beginning to grow, and the syndicalists found no strong labor organization in the field to oppose them.

In the French labor movement, during the last two decades, anarchistic ideas have played a greater rôle than in the American movement. Some of the most influential leaders of the General Confederation of Labor have come from the anarchist ranks. French syndicalism, therefore, though distinct from

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anarchism, is nearer to it than is the I. W. W. The latter has been in closer contact with the socialist movement. Consequently the French syndicalists are more aggressive than the American in their anti-political campaign.

Other differences appear to be determined by the different political and economic conditions of the two countries. The direct-government methods of the American labor movement are incompatible with the principles of representation followed in the French movement. Proportional representation and the referendum are required in the constitution of the I. W. W. but have not been adopted by the French syndicalists. On the other hand, the I. W. W. has grown up in a country of "trusts," and the reasoning of its leaders is naturally influenced by this fact. The importance attached to industries as compared with single trades, the organization of the labor movement according to industrial departments, the belief that this organization will furnish the basis of the socialist state—all this is in harmony with American economic conditions. French syndicalism, developing in a less centralized economic system and reacting against a highly centralized political system, is inclined to lay more stress on the decentralizing tendencies in modern life. It consequently attaches more importance to the functions and possibilities of the *syndicat* and of the local federation of *syndicats* (*Bourse du Travail*).

The leaders of the I. W. W. are fully conscious of the differences which exist between them and the French syndicalists; they are even inclined to exaggerate the significance of these differences. On the other hand, within the last twelve months there have been efforts in America to organize a movement which shall identify itself completely, both in character and in name, with French syndicalism. The sponsors of this movement are mostly anarchists who disapprove of a separate revolutionary labor organization. They argue that in time the labor movement is bound to develop revolutionary ideas and a revolutionary spirit, and that it is the duty of the revolutionists, at present, to remain within the ranks of organized labor—in other words, within the American Federation of Labor—and to work for their ideas from within. To promote their propaganda, how-

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ever, they deem it advisable to organize leagues, devoted to the spread of syndicalist ideas. The first meeting of the Syndicalist League of New York City was held in December, 1912. There are leagues in many other cities, and "The Syndicalist League of North America" exists at least on paper. A bi-weekly paper, *The Syndicalist*, is devoted to the advancement of the movement. In America, however, the syndicalist leagues are as yet of little importance. Both in numbers and in energy they are far behind the Syndicalist League of England, which seems to have inspired the movement.

IV

The only American organization, therefore, which embodies syndicalist tendencies—under the name of "industrial unionism"—is the I. W. W., and the future of American revolutionary unionists will for some time to come be bound up with the destinies of this organization. What these destinies may be, it is difficult to foretell. At present the I. W. W. is numerically and financially weak. According to Mr. Vincent St. John,[1] general secretary-treasurer of the organization, the paid-up membership is 70,000, distributed in the following manner: textile industry, 40,000; lumber industry, 15,000; railroad construction, 10,000; metal and machinery, 1000; and miscellaneous, 4000. The members in the textile industry are located in the eastern states; those in the lumber industry are in the states of Washington, Oregon, Louisiana and Texas; the railroad construction workers are in Washington, Oregon and British Columbia; the rest of the membership is scattered.

The figures given by Mr. Vincent St. John can hardly be taken as representing the full strength of the I. W. W. The membership of this organization is in its nature a fluid, shifting mass, largely migratory, subject to long periods of unemployment and disinclined to the regular payment of dues. While

[1] In a letter dated December 5, 1912. The writer takes this opportunity to acknowledge his indebtedness and to tender his thanks to Messrs. Vincent St. John, Clarence Smith, Daniel De Leon, Frank Bohn, Wm. D. Haywood, Wm. E. Trautmann, Franklin Jordan and all others who have assisted him by the loan of documents and by replies to queries, either in letters or in personal interviews.

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this vitally affects the finances of the organization, its finances are not a fair test of its effective force. Its tactics are not those of a well appointed army, retarded in its movements by an elaborate commissariat, but rather those of a daring advance guard. The leading spirits of the I. W. W. realize the situation and frankly admit that their organization can grow only in proportion as it can fight. They seek, therefore, to utilize every opportunity for a clear-cut class struggle. That is why they have concentrated their attention on those industries in which unskilled labor predominates, and why they are bent upon fanning every little fire into a blaze of class war.

There can be little doubt that the I. W. W. is already exerting no slight influence on the economic life of the country. It terrifies employers. During the recent strike in New York city, many employers were so disturbed by the fear that the I. W. W. might assume the leadership of the strikers that they were ready to make concessions to escape this peril. They were willing to make terms with moderate and reasonable trade unions rather than run the risk of developing indirectly a revolutionary organization. The American Federation of Labor is undoubtedly feeling the pressure exercised by the I. W. W.; it has been spurred into more energetic action in fields which it had previously neglected. The recent invasion of the steel industry by the Federation illustrates the point. Whether the Federation will now succeed where it has previously failed is hard to predict. In certain industries it cannot compete with the I. W. W. It is therefore probable that the I. W. W. will achieve further success in the near future. It may build up an effective organization in a limited number of industries. It may then be in a position to exert a more extensive influence on the labor movement of the entire country.[1]

LOUIS LEVINE.

NEW YORK CITY.

[1] Since this article was written, the strike of the silk operatives of Paterson, New Jersey, has taken place. During this strike, the attitudes of the employers, of the American Federation of Labor and of the Socialists towards the I. W. W. and their methods were conspicuous as never before. The feeling of hostility towards the I. W. W. is now deeper and more general than before and may lead to the accentuation of the tendencies described in this article.

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THE POLITICAL THEORIES OF THE GERMAN IDEALISTS. II[1]

Wilhelm von Humboldt

BEFORE Fichte worked out his system of extensive state activity, a noteworthy theory in the diametrically opposite sense was formulated by the elder of the Humboldt brothers. His *Ideas for an Attempt to Determine the Limits of the Activity of the State*[2] was written and parts of it were published in 1792, when the author was but twenty-five years old. In his later career, as a power in the Prussian government, he lost confidence and interest in the product of his irresponsible youthful enthusiasm, and the complete essay did not see the light till 1851, long after his death.[3] Though thus in a way repudiated by its author, the little book has a real significance in the history of political theory. It embodies a very full and systematic expression of ideas that were closely involved in the philosophy of the time when the essay was written and that were on the verge of widespread acceptance when it was finally published.[4]

Humboldt assumes without discussion the Kantian view as to the origin of the state in a contract between men for their respective benefit. What he emphasizes and reiterates is that the political union thus created is merely a means—one among many—for the promotion and realization of human welfare. The state is not an end in itself. It must subserve the end of man; and the end of man is the highest and best proportioned development of his powers to a whole.[5] What, then, can the

[1] The first part of this study was printed in this Quarterly, vol. xxviii, pp. 193–206.

[2] *Ideen zu einem Versuch die Gränzen der Wirksamkeit des Staats zu bestimmen.*

[3] See Cauer's Einleitung to the Ideen (Breslau, 1851).

[4] It is an interesting coincidence that Herbert Spencer's earliest exposition of *laissez-faire*, the Social Statics, appeared in 1850.

[5] Ideen, p. 9.

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state contribute to this development? Shall it take the individual in hand and guide him along carefully prescribed paths to his goal? Or shall it leave him to find his own path and make his own way? This latter, Humboldt answers, is the true principle; and his essay aims to establish it on the firmest rational grounds.

The full development of humanity depends, so his argument runs, on the fullest possible development of the individual man. This in turn depends upon the unrestricted play of the powers and faculties peculiar to each (*Eigenthümlichkeiten*). Liberty, in this sense, is the condition of progress. No obstacle due to the forces of physical nature will fail to yield in time to the art and energy of men acting freely, either singly or in voluntary coöperation. Only those obstacles to progress that arise out of the domineering propensities of men require for their removal a power that can and will constrain the action of the individual. Such a power is the state. It is necessary, inasmuch as the collisions of individuals seeking unlimited self-expression would be fatal to the ends of all. At the same time it is an evil, because it interferes with that freedom which is the condition of full development in each. The problem then is to determine how this necessary evil, the state, is to be made most contributory—or, more exactly, least detrimental—to human advancement.

Humboldt's solution is that the action of the state shall never extend to the positive promotion of the welfare of its citizens but shall be confined to a negative rôle, namely, that of providing for their security (*Sicherheit*). His demonstration of this doctrine, both in the abstract and the concrete aspects, covers substantially all that has ever been urged in support of it. Against intervention by the state for the positive promotion of individual welfare, he urges that it tends to produce a depressing uniformity among the citizens, to weaken their powers, to obstruct the proper reaction of the material environment upon their spirit and character, to divert their energy from self-development and waste it in prescribing rules for their fellows, and otherwise to hinder that exercise of idiosyncrasy which is the key to progress. On one or another of

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these grounds Humboldt insists that the state must refrain from concern in education, in religion, in the improvement of morals (*Sittenverbesserung*)—in short from all activity designed to influence the character of the people (*Nation*). Effects upon the popular spirit will flow indirectly from the legitimate operation of government; and these indirect effects alone should be regarded in shaping the policy of the state.

The legitimate sphere of the state is solely the care for the security of the citizens. By security he means "certainty of lawful liberty" (*gesetzmässige Freiheit*), that is, certainty that the use of one's powers and the enjoyment of one's property will not be wrongfully (*widerrechtlich*) obstructed.[1] The criterion of state intervention must be necessity, not expediency. Danger to security may come from without or from within a society, and the field of state action is accordingly twofold. War in defense of the community is one of its appropriate activities; and war, with all its objectionable incidents, Humboldt regards as a very salutary influence in the development of human character.[2] On the side of internal security the functions of the state are limited to those that fall into the four categories: police law (*Polizeigesetze*), private law (*Civilgesetze*), the regulation of judicial procedure (*Prozessordnung*) and criminal law (*Kriminalgesetze*), together with the guardianship of helpless minors and the insane. The rule throughout all these classes must be that the scope of governmental intervention is determined solely by what is necessary for the protection of individuals in person and property.

This conception of the state Humboldt presents frankly as an ideal—a product of pure reason, not known to experience and not likely to be realized.[3] It is an ideal of liberty; and men in general tend to feel more interest in dominion (*Herrschaft*). The strong man builds up a far-reaching government

[1] Ideen, p. 103.

[2] "... ist mir der Krieg eine der heilsamsten Erscheinungen zur Bildung des Menschengeschlechts, und ungern seh ich ihn nach und nach immer mehr vom Schauplatz zurücktreten." Ideen, p. 48. But the state must not actively either encourage war or hinder it. *Ibid.* p. 62.

[3] *Ibid.* pp. 175–177.

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out of the sheer exuberance of his powers; the weak man is proud to be part of the mighty machine.[1] Until a society is ripe for liberty, until men show that their fetters chafe them, it is futile to press upon them a free constitution. A taste for liberty may be stimulated by the gradual extension of opportunities to enjoy it; but the abrupt transformation of institutions is undesirable. Reform, not revolution, is Humboldt's way of introducing higher ideas; and reform is to be not compulsory but voluntary—is to express primarily the feelings and ideas of the people, not the will of the government. The essay is pervaded with the author's conviction that political authority not only ought to be, but in fact actually has been, of minor importance in the development of mankind. The constitution of the state, he delares, is subsidiary to the social union (*Nationalverein*),[2] from whose manifold activities spring the greatest advantages of life. In the unobtrusive working of social forces the spirit and power of a people are expressed, and history shows that all great political revolutions spring from antecedent changes in this spirit and this power.[3] Experience teaches the same lesson as pure reason, that the progress of mankind is not dependent upon far-reaching governmental activity.

Humboldt's theory, taken as a whole, is a synthesis of many elements that preceding thinkers had wrought out separately. On grounds of theory similar to his, Milton had excluded government from interference with the citizen's expression of opinion, Locke had excluded it from interference with the citizen's material property, Voltaire and a host of others had excluded it from interference with his religious worship, the Physiocrats and economists had excluded it from interference with his industrial and commercial life. All these were combined in Humboldt's theory, and all were based logically upon the dogma of the dignity and worth of man as man—a dogma that had played a part in most of the early individualistic philosophies.

[1] Ideen, p. 182.

[2] "Die Staatsverfassung und der Nationalverein sollten . . . nie mit einander verwechselt werden."—*Ibid.* p. 176.

[3] *Ibid.* pp. 178–79.

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It is to be noticed, however, that Humboldt, like his predecessors, while preaching individualism, did not preach democracy. He thought of government as something outside of the socially organized people, not conceivably part and parcel of it. Even while formally accepting the dogma of the social contract, he showed no consciousness that the dogma involves the possibility that state activity may mean self-activity, and restriction upon government may be self-imposed restriction upon the individual. Humboldt's individualism was in part that of the intellectual aristocrat, resenting, like Milton, Voltaire and *les philosophes*, the authority of lesser men who happened to possess political power, and in part that of the Prussian subject, unconsciously determined in his philosophy, like Kant and Fichte, by the actualities of the régime of the Hohenzollerns.[1]

Georg Wilhelm Friedrich Hegel

The climax of German idealism in political philosophy was reached in the speculations of Hegel. The extraordinary genius of this thinker produced a system that may almost be said to have transcended the transcendentalism of Kant and even of Fichte. Like those two predecessors, Hegel developed his political principles as part of a comprehensive system of philosophy. There was that in his system, however, which gave it a strongly marked individuality and caused it to wield an influence in political science that long outlasted that of his forerunners. The great distinguishing mark of the Hegelian system was the evolutionary and historical spirit that pervaded it. This element made it more acceptable to the nineteenth century, during which the confidence of the preceding century in fixedness and rigidity was steadily passing away. The philosophy of history, in which Hegel developed with great fullness his evolutionary doctrine, was but an appendix, however, to a

[1] Humboldt was made Prussian minister of culture and education in 1809, and in this capacity conducted governmental activities that his theories condemned as deleterious. It is one of the oddities of history that the philosopher who so skillfully exposed the evils of state interference in education (Ideen, pp. 56-60) should have been chiefly instrumental in the founding of that remarkable monument of state interference, the University of Berlin.

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vast body of abstract speculation that was often repulsive in form and obscure in substance.[1]

Hegel's political theory proper was systematically set forth in his *Outlines of the Philosophy of Right*.[2] His announced purpose in this work was, like that of Kant and Fichte, to exhibit the state as thinkable—to develop the purely intellectual modes and processes through which the idea of the state must take shape. His problem was avowedly that of Plato. For his starting-point he took the will, as his German predecessors, following Rousseau, had done. But the will, as Hegel conceived it, was not an attribute or faculty of an individual person. That will in this sense had been the basis of earlier systems was their fatal weakness. In this, Rousseau, Kant and Fichte all had gone astray. For valid philosophy, Hegel held, will must be conceived as one aspect of pure abstract intelligence—or, in the term that almost defies rendering into English, of *Geist*. Thus conceived, will is eternal, universal, self-conscious, self-determining. Freedom, therefore, is of the essence of will. As Hegel lucidly phrased it: The idea of the will, as a last abstraction, is the free will that wills the free will.[3]

Having thus posited free will as the absolute, Hegel develops his philosophy by presenting various stages of the process in which this absolute idea is realized. By "realization," however, Hegel does not mean primarily presence to the senses or to experience. The reiterated postulate of his system is: What is rational is real; what is real is rational.[4] Hence the idea of

[1] Doubtless these qualities are inevitable in a literature that deals with the uttermost concepts of pure thought; the Hegelian exposition at any rate betrays no attempt to make concessions to the average intelligence, and bristles throughout with a serried array of *-heits* and *-keits* and *-täts* that too often effectively bar access to the thought that lies behind them. Thus, for example, begins his explanation of the relation between family and civil society; "Die Allgemeinheit hat hier zum Ausgangspunkt die Selbstständigkeit der Besonderheit, und die Sittlichkeit scheint somit auf diesem Standpunkt verloren, denn für das Bewusstsein ist eigentlich die Identität der Familie das Erste, Gottliche und Pflichtgebietende."

[2] Grundlinien der Philosophie des Rechts, oder Naturrecht und Staatswissenschaft im Grundrisse. Werke, vol. viii.

[3] Philosophie des Rechts, Einleitung, sec. 27.

[4] "Was vernünftig ist, das ist wirklich; und was wirklich ist, das ist vernünftig." Werke, vol. viii, Vorrede. *Cf.* sec. 141: "nur das Unendliche, die Idee, ist wirklich."

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the free will is realized when it is manifested in some form of thought that is produced by right reason. Thus the "realization of freedom" is but the completion of an exercise in formal logic. Such at all events is the theoretical character of Hegel's *Philosophy of Right*. Starting from the conception of will as active, the philosopher deduces, by the methods and formulas of his peculiar logic, a series of concepts in which he discovers a progressive approximation to that of perfect freedom. These concepts form the chapter and section heads of his system. Let us take them in his order.[1]

First comes law (*Recht*). This is the field in which the ideas of personality, property and contract are developed. All these are shown to be manifestations of the free will. A living creature is a person only so far as it freely wills to be so. An object is property because it is determined by the free will of a person. A human being or a people is property—slave—only by lack of the free will to be free.[2] In this doctrine as to slavery, as wherever else Hegel's practical views come into sight through the haze of his technical vocabulary and method, law and rights are judged not by a fixed standard, but with reference to the various stages of culture and self-consciousness that history reveals.

The second phase in the realization of the free will is subjective morality (*Moralität*). Here belong those aspects of self-determination in which the individual is affected by a consciousness of other like individuals. The conceptions of purpose (*Vorsatz*), responsibility, motive, conscience are formulated and come to the front; but the full relation of the individual to the universal will is not displayed here. That is revealed in still another and final field, that of conventional or customary morality (*Sittlichkeit*) or, in other words, social ethics.[3] The customs or habits (*die Sitten*) of mankind ex-

[1] Philosophie des Rechts, sec. 33.

[2] *Ibid.* sec. 57.

[3] Hegel's distinction between *Moralität* and *Sittlichkeit* can hardly be indicated by any concise expressions in English. Bosanquet, whose skill in formulating what Hegel may have or ought to have meant is so vastly superior to Hegel's own ability to make clear what he really did mean, translates *Sittlichkeit* by "social ethics." Philosophical Theory of the State, p. 265.

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press the working of a universal cause. At the same time they bear the impress of individual choice. These considerations underlie Hegel's rather rapturous proclamations that the socially ethical (*das Sittliche*) satisfies the idea of realized free will. As he expresses it in his own technical terms: "What law (*Recht*) and abstract morality (*Moralität*) are *not*, custom (*Sitte*) *is*, namely, spirit (*Geist*)"; and spirit is "unity of the individual and the universal."[1] Hence, since the reduction of all concepts to terms of spirit is the end of philosophy according to Hegel, his goal is reached in social ethics.

It is in the detailed exposition of this subject that the theory of the state is to be found. The institutions in which the socially ethical is revealed are, according to Hegel, three: the family, civil society and the state. His doctrine as to the family, when stripped of its Hegelian husks, is the conventional doctrine of his day. Civil society,[2] however, appears in a new light. It is made to include those relations of individual to individual that turn upon the satisfaction of economic needs, the protection of property through the administration of justice (*Rechtspflege*) and the care of the general welfare through agencies of police and of corporation (*Polizei und Korporation*). Admitting that this classification attributes to civil society much that has commonly been attributed to the state, Hegel stoutly defends his own idea. What appears to be the real basis of his procedure is the zeal for artistic symmetry in the structure of his system. The adjustment of these introductory concepts is cleverly made to furnish a neat and attractive setting for the capstone—the idea of the state (*der Staat*).

[1] Philosophie des Rechts, secs. 151, 156.

[2] Hegel's term is *bürgerliche Gesellschaft*, and this Bosanquet renders "bourgeois society." To me this rendering seems misleading, because it suggests a connection that does not exist between Hegel's doctrine and certain phases of nineteenth-century revolutionary politics.

[3] Thus, after a rather perfunctory and arid treatment of the corporation, he continues: "Der Zweck der Korporation als beschränkter und endlicher hat seine Wahrheit . . . in dem an und für sich allgemeinen Zwecke und dessen absoluter Wirklichkeit: die Sphäre der bürgerlichen Gesellschaft geht daher in den Staat über." Philosophie des Rechts, sec. 256. Thus the corporation fulfills the useful function of furnishing the philosopher with a smooth transition.

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This final goal of his system evokes the utmost exuberance of Hegel's peculiar diction. The state, he explains, is the reality of the social-ethical idea—the social-ethical spirit as the revealed, self-perceived substantial will that thinks and knows itself and fulfills what it knows so far as it knows it. The state, further, is "perfected rationality," "absolute, fixed end-in-itself"; for it is the unity of the universal will and the individual will—or, what is the same thing, of objective and subjective freedom; and the unity of universality and particularity is perfected rationality (*das an und für sich Vernünftige*). As such the state is of the eternal and necessary essence of spirit (*Sein des Geistes*).[1]

This exposition hardly requires the warning given by Hegel, that he is dealing with the state not as a historical phenomenon but as an intellectual concept (*gedachter-Begriff*). His phrases should have in fact no meaning to one not an adept in the Hegelian logic. But the philosopher was an artist in abstractions, and he contrived to involve his dialectic in an atmosphere of mystical exaltation that suggested the proximity of undiscovered truth. Many an ardent soul was satisfied to repeat the rhapsodical Hegelian dicta about the state, in the conviction that they solved anew and finally the ultimate problems of politics. The ineffable majesty attributed by the master to the state as idea, was inevitably transferred by the followers to the state as a concrete fact. In the heyday of Hegel's popularity at Berlin (1818–1831) there was no lack of philosophasters to whom the Prussian monarchy was "perfected rationality," and who saw the "eternal and necessary essence of spirit" in the stodgy Hohenzollern then on the throne.

The idea of the state manifests itself, according to Hegel, in three ways: as constitution or internal public law (*Verfassung oder inneres Staatsrecht*), as external public law and as world history. In each of these three domains he traces the progressive unfolding of freedom—the synthesis of universal and individual will. Without following the devious path by which

[1] For these and many more bits of Hegelian eloquence, see Philosophie des Rechts, 257, 258.

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the philosopher reaches his conclusions, let us examine some of the more concrete ideas on which he expresses himself coherently.

The fundamental fact in a particular state is the political consciousness (*Gesinnung*) of a people (*Volk*). This consciousness determines the constitution. To think of a constitution as a created thing (*ein Gemachtes*), having an absolute beginning, is all wrong; changes may be made from time to time, but the constitution in some form is a fixed fact, inseparable from the idea of a state.[1] Only a crowd of individuals can be thought of, if a constitution is not presumed; and an atomistic crowd is no concept of political science. Who should "make" the constitution is therefore a senseless question. Not less futile is debate as to what form of constitution and government is best. A people inevitably has the constitution that expresses its spirit and culture at the given time. No other could be better for that people at that time. Another system in another community, or in the same community at another time, may more fully realize liberty; but this is true not because the system is better *per se*, but because a higher stage of culture has been reached by the people.

In what, now, according to Hegel, is the constitution manifest? In the differentiation and action of the various powers. "The state," he says, "is organism, that is, development of the idea to its distinctions."[2] The organism is the constitution, consisting of distinct powers so correlated as to sustain and strengthen the unity of the whole. Hegel's logic, like Montesquieu's, discovers three of these powers, but the German's three are not the Frenchman's. The three powers indispensable to the idea of state are, in Hegel's analysis, the legislative, the administrative (*Regierungsgewalt*, under which falls the judicial), and the monarchic (*fürstliche Gewalt*). Of these, the first two do not differ substantially from the legislative and

[1] Hegel's expression is rather strong: Die Verfassung ist das schlechthin an und für sich Seyende, das darum als das Göttliche und beharrende, und als über der Sphäre dessen, was gemacht wird, zu betrachten ist.—Phil. des Rechts, § 273.

[2] Der Staat ist Organismus, das heiss, Entwickelung der Idee zu ihren Unterschieden.—*Ibid.* § 269.

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executive of earlier philosophers. The monarchic power, however, is endowed by Hegel with the highest importance. It is the unifying force through which the other two powers are restrained from disrupting the state. It is the element through which the idea of a constitution is fully realized. The differentiation of legislative and executive expresses the principle of diversity that is essential to the idea of constitution; the monarchic power contributes the principle of unity that makes the idea complete. Constitutional monarchy, thus conceived, fulfills for Hegel all the conditions of perfect rationality, and the development of the state into this form, he declares, is the typical achievement of the modern world.[1] In this form are comprehended and blended the three forms, monarchy, aristocracy and democracy, that satisfied the analysis of earlier and more primitive ages; for the prince represents the one, the administration the few and the legislature the many.

The monarchic power (*fürstliche Gewalt*) is demonstrated at length by Hegel to furnish the only really philosophical principle of sovereignty. Granting that sovereignty in conception may properly be said to be an attribute of the state as a whole, he contends that sovereignty in reality and in action consists in the final decisive indication of an individual will. If the state be sovereign, yet an expression of the sovereign will must necessarily involve in last analysis a determination by some person. If sovereignty be sacredly in the people (*das Volk*), nevertheless the will of the people is in every concrete instance the decision of some leader or some nominal servant. The monarchic principle is thus present and active in every state, and the fully developed political people will recognize this principle and give full expression to it in their constitutional system—will provide for its regulated and open, rather than irregular and secret action.[2] Sovereignty, thus, is to be ascribed scientifically to the monarch.

This demonstration that the prince is an essential feature in

[1] "Die Ausbildung des Staats zur constitutionellen Monarchie ist das Werk der neueren Welt, in welcher die substantielle Idee die unendliche Form gewonnen hat." Philosophie des Rechts, sec. 273.

[2] *Ibia.* sec. 279.

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the philosophical conception of the state is followed by an equally elaborate demonstration that the legislative power (*gesetzgebende Gewalt*) must be vested in an organ wherein prince, administration (*Regierung*) and people (*Volk*) all shall have part. Hegel's idea of a legislature is that of the diet (*Landtag*) long familiar in Germany, with modifications drawn from the British Parliament. He supports this idea with all the apparatus of his peculiar logic. Participation of prince and administration in lawmaking is essential to the unity of the state and of its will—which unity the vaunted separation of powers must certainly destroy. The popular element in the legislature must appear in an assembly that shall represent the people as organic, not as atomistic. Classes (*Stände*), expressing the economic and social interests of the community, not the people as a group of individuals, furnish the basis of representation. Hegel has no sympathy with the current notion that the source and end of political science is the will of the people; for in many or most cases those who sustain this dogma really mean by "people" that part of the people which does not and cannot know its own will.[1] Self-conscious, intellectual volition is all that can enter into the constitution of a rational state.

In external public law Hegel finds the state manifested in the relation of independent self-determined existence among distinct communities. International relations must be expressed in a system that recognizes the complete individuality of every politically self-conscious people.[2] No "law" governs these relations, save the will of the particular states. The standards of conduct for the states are not the standards of private persons.[2] War, despite the amiable ideals of perpetual peace that Kant and others have expounded, must remain, Hegel believes, an inevitable and not wholly maleficent incident in the establishment and preservation of national individuality.[3]

[1] ". . . ist vielmehr der Fall dass das Volk, insofern mit diesem Wort ein besonderer Theil der Mitglieder eines Staats bezeichnet ist, den Theil ausdrückt der nicht weiss was er will.—*Ibid.* sec. 301.

[2] *Ibid.* secs. 330, 337.

[3] Adepts in the Hegelian terminology probably see some such thought as this in the cryptic phrase: Der Krieg . . . ist . . . das Moment worin die Idealität des Besonderen ihr Recht erhält und Wirklichkeit wird. *Ibid.* sec. 324.

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The final channel through which the state is revealed as perfected is, according to Hegel, world history (*Weltgeschichte*). To him the process of events is an unfolding of universal spirit (*Geist*). The culture of every people—its art, religion, political institutions—expresses a particular stage in the activity and revelation of the absolute idea. Each successive age in world history since civilization began offers to view some people in whose spirit (*Volksgeist*) is reflected the world-spirit (*Weltgeist*), so far as that has been revealed. The process of revelation and realization of the idea, according to the principles of the Hegelian dialect, is a fourfold process. It is not surprising, therefore, that Hegel's survey of general history detects four great world-historic political systems (*Reiche*), in whose successive careers the idea of freedom has progressed to perfect realization. These four systems are the Oriental, the Greek, the Roman and the German. With benumbing legerdemain the philosopher makes the commonplace facts of familiar history fit themselves nicely at the word into the categories and relations of his logic, and shows us mankind through all the ages marching steadily but unconsciously along Hegelian lines toward the Germanic perfection of the nineteenth century. In the modern world freedom is revealed to be the universal principle of state life. "The Orient knew and to the present day knows only that *One* [*i. e.* the despot] is free; the Greek and Roman World, that *Some* are free; the German World knows that *All* are free."[1]

Such is Hegel's generalization of the world-historical process. It displays the usual tendency of a philosophy of history—to represent the thinker's own time and place as the climax and summation of progress. But with whatever qualifications we judge the speculation and conclusions of Hegel, it is impossible to deny that the scope and coherency of his system of political science and the boldness and vast sweep of his historical inductions[2] reveal a mind of titanic power.

[1] Philosophy of History, p. 104.

[2] His Philosophy of History contains a full and extraordinarily eloquent and inspiring expansion of the idea of world-history that is outlined in his Philosophy of Law, secs. 341–360.

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Influence of the German Idealists

Of the historical and evolutionary spirit that pervaded Hegel's politics there was little or no sign in the thought of Kant and Fichte. They represented the dogmatism of the French Revolution, while Hegel reflected a phase of the reaction that followed the downfall of Napoleon. There was thus great diversity among those whom I have classed together in this essay. But there was also an essential likeness that justifies the classification—the conviction common to all that the vital truths of political science were to be reached rather through the processes of pure thought than through investigation of experience. Absolute verity, comprehensible to supreme intelligence and transcending the sphere of the practical, was the goal common to these thinkers.

Like all other idealists, the German philosophers in fact achieved little more than to clothe certain institutions and aspirations of contemporary politics with the sanctifying garb of a mystic form and nomenclature. To the substance of political doctrine their contributions were very slight. The strength and earnestness of their expositions and the confidence and zeal inspired in their disciples produced, however, very clear results in the form and method of political philosophy, especially in Germany. Through the refined psychological analysis that characterized the work of Kant, Fichte and Hegel, the scope and classification of political ideas assumed great scientific precision. The further influence of these thinkers may be summed up as follows:

(1) The idea of will, as the ultimate element in politics and law, was developed to its utmost limits. While Rousseau had exploited this idea with the clever manipulation of the amateur, Kant and Fichte, with professional exactness, set it in place as the corner-stone of a massive and symmetrical philosophy. Hegel also held to the will as the initial idea; but in his philosophical structure it was the cap-stone rather than the corner-stone, he building from the apex down, as was done, according to an ingenious hypothesis, by the constructors of the Egyptian pyramids.

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(2) Contract, as the formula through which the individual will creates social and political authority, received at the hands of Kant and Fichte the highest degree of philosophical finish. No more was possible than was achieved by Fichte in the way of giving full scope and logical precision to the theory of the social contract. Even in his own life-time, however, as the spirit of the Revolution waned, the validity of this formula as a basis of political life began to appear less clear. Hegel dropped it entirely in his explanation of the state; and in all later political theory the social contract, while sometimes deferred to with formal respect, has never received the serious recognition of any philosopher ranking intellectually with Fichte.

(3) The decline of the contract theory was promoted by another influence emanating from the German idealists. Whatever the degree of respect manifested by them for the dignity and rights of man as an individual, all of them save Humboldt ascribed unmeasured majesty and excellence to the state. With Kant and Fichte this ascription originated in their sense of the importance of political organization to the individual; but eventually it took a shape that lost connection with its origin and suggested a cult of state and even of monarch *per se*. With Hegel the glorification of the state became a sort of Bacchic frenzy over intellectual parturition. Having brought forth the idea of the state, he set no limit to the adulation of his offspring: it is the absolute spirit, consciously realizing itself in the world; its existence has no other explanation than that God so wills; it is God.[1] Where such doctrine held sway there was inevitably a tendency for the individual to wither and for attention to center about the institutions in which this divine existence was manifest. The attributes of political authority rather than the rights of man became the core of discussion.

(4) Finally, the doctrine of nationality as a fundamental principle of political organization received considerable stimulus

[1] "Der Staat ist der Geist, der in der Welt steht und sich in derselben mit Bewusstsein realisirt . . . es ist der Gang Gottes in der Welt, dass der Staat ist . . . Bei der Idee des Staats muss man nicht besondere Staaten vor Augen haben . . . man muss vielmehr die Idee, diesen wirklichen Gott, für sich betrachten." Philosophie des Rechts, sec. 258, Zusatz.

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from both Fichte and Hegel. The partition of Poland, the sweeping obliteration of ancient jurisdictions by the Napoleonic conquests and the no less arbitrary readjustments made at the Congress of Vienna, all aroused fierce controversy as to the theoretical basis of the claim to independent political existence. Fichte set up, as we have seen, the ideal of a geographically isolated and economically self-sufficing community as objectively a nation. Hegel was less precise, stressing political self-consciousness as the criterion of a people (*Volk*). At the same time he attributed great significance to geographic and other physical conditions, quite in the spirit of Bodin and Montesquieu; and he included the whole world in a splendid, if not wholly convincing, generalization as to the past, present and future abodes of the truly world-historic nations.[1]

It was of course an essential element in the doctrines of the philosophers that the criteria of nationality should be such as to assure to the Germans of central Europe the qualities of a political people. The conçeptions worked out in accordance with this requirement played a great rôle in the demand for German national unity that figured so largely in the stirring history of the mid-nineteenth century.

WM. A. DUNNING.

[1] Philosophy of History, Introduction. America, he says, is "the land of the future, where, in the ages that lie before us, the burden of the World's History shall reveal itself. . . ."—p. 86.

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WORKING TOWARD A FEDERAL DOMAIN

WHEN the Constitution was being made, one of the problems confronting its framers was that caused by the existence of a federal domain—of territory, that is, within the boundaries of the United States which formed no part of any state. As Rufus King declared in the Federal Convention, "The United States were now admitted to be proprietors of the Country, Northwest of the Ohio." For the regulation and administration of this territory provision was made by the clause in the Constitution giving Congress power "to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." This provision in the fundamental law appears to have caused no great debate in the Convention; but the principle involved had an interesting history and had long divided political opinion; the controversy which it had evoked had affected the formation of the Union itself. The growth of the theory of a federal domain, moreover, well illustrates the continuity between the colonial and national periods of American history and shows that the Revolution made no abrupt break in the development of American institutions and political ideas.

The English-American colonies owed their legal existence to royal charters, by the terms of which some, though not all, of the colonies were declared to extend from "sea to sea." With the exception of the Georgia charter, those of all the continental colonies were issued in the seventeenth century, when little was known of the geography of North America. Those responsible for the granting of the charters had no conception of the immense extent of territory included in the "sea to sea" grants. Before the close of the first quarter of the eighteenth century most of the royal charters had been revoked and the majority of the colonies had become royal provinces. All ungranted lands in royal provinces were legally at the disposal of the crown, and might be regranted and formed into new provinces. But if not so regranted they continued to be viewed as

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part of the colony within whose boundaries the charter had included them. The boundary claims derived from the old "sea to sea" charters thus survived the charters themselves, and were put forward by the English government in the eighteenth century to invalidate the claims which the French were advancing to the Mississippi valley, the great American hinterland. Had the French claims prevailed, the English colonies would have been bounded on the west by the Appalachians. But when, by the Treaty of Paris in 1763, France abandoned all claims to territory in North America, the continent was divided between Great Britain and Spain; and the Mississippi, the boundary between the dominions of the two powers, fixed the western limits of those colonies which had before claimed to extend to the Pacific ocean.

But even before the French had been expelled from the trans-Appalachian country the charter claims of some of the colonies were regarded by many as too extensive, and suggestions were made looking to some kind of collective control over the territory west of the mountains. In July, 1754, the commissioners of the colonies, assembled at Albany in pursuance of the suggestion of the Board of Trade, advised

> that the bounds of those colonies which extend to the South Sea be contracted and limited by the Alleghany or Appalachian mountains, and that measures be taken for settling from time to time colonies of His Majesty's protestant subjects westward of said mountains in convenient cantons to be assigned for that purpose, . . .[1]

Franklin, one of Pennsylvania's commissioners, submitted his well known "plan of union," according to which the general affairs of the colonies were to be administered by a president-general, appointed by the crown, and a grand council, whose members were to be chosen by the several colonial assemblies. The president-general, with the advice of the grand council, was to make all purchases from the Indians for the crown "of Lands not now within the Bounds of particular colonies, or that shall not be within their Bounds when some of them are reduced to

[1] O'Callaghan, Documentary History of the State of New York, II, 356.

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more Convenient Dimensions." Among the reasons for this article in the "plan" the following was given by its author:

> Several of the colony charters in America extend their bounds to the South Sea, which may be perhaps three or four thousand miles in length to one or two hundred miles in breadth. It is supposed they must in time be reduced to dimensions more convenient for the common purposes of government.[1]

The president-general and grand council were likewise to make new settlements on lands thus purchased by granting land in the king's name. Among the reasons given for this provision it was stated that individual colonies were not strong enough to extend themselves by new settlements so far from the old, but that the joint force of the Union might establish a new colony or two, or extend an old colony "greatly to the security of our present frontiers, increase of trade and people, breaking off the French communication between Canada and Louisiana, and speedy settlement of the intermediate lands."[2] Moreover the same authority was to make laws for regulating and governing such new settlements until the crown should see fit to erect them into separate governments. The reason advanced for this was that

> the making of laws suitable for the new colonies, it was thought, would be properly vested in the president-general and grand council; under whose protection they must at first necessarily be, and who would be well acquainted with their circumstances, as having settled them. When they are become sufficiently populous, they may by the Crown be formed into complete and distinct governments.[3]

Although the plan proposed by Franklin was not approved either by the colonies or by the home government, the idea of curtailing the westward extension of the colonies was not abandoned. Shortly after drafting the Albany plan, Franklin wrote a "Plan for Settling Two Western Colonies in North America." After enumerating the advantages to be expected

[1] Works of Franklin, edited by Sparks, III, 47.

[2] *Ibid.* III, 48–49.

[3] *Ibid.* III, 49.

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from the establishment of two strong colonies north of the Ohio, he observed:

The grants to most of the colonies are of long, narrow strips of land, extending west from the Atlantic to the South Sea. They are much too long for their width; the extremes at too great a distance; and therefore unfit to be continued under their present dimensions. Several of the old colonies may conveniently be limited westward by the Alleghany or Appalachian mountains, and new colonies formed west of these mountains.[1]

Shortly after the conclusion of the Seven Years' War, a royal proclamation of October 7, 1763, created out of the territory acquired from France and Spain three new British provinces on the continent of North America; but for the West—the country between the Appalachians and the Mississippi, the Great Lakes and the new provinces of East and West Florida—no civil government was provided. It was reserved temporarily for the use of the Indians, and settlements west of the mountains were for the time forbidden. Save for one, the purposes of the proclamation need not concern us. Says the *Annual Register* for 1763, in words probably written by Burke:

Another reason, we suppose, why no disposition has been made of the inland country, was, that the charters of many of our old colonies give them, with very few exceptions, no other bounds to the westward but the South Sea; and consequently these grants comprehended almost everything we have conquered. These charters were given when this continent was little known and little valued. They were then scarce acquainted with any other limits than the limits of America itself; and they were prodigal of what they considered as of no great importance. The colonies settled under royal government have, generally, been laid out much in the same manner; and though the difficulties which arise on this quarter are not so great as in the former, they are yet sufficiently embarrassing. Nothing can be more inconvenient, or can be attended with more absurd consequences, than to admit the execution of the powers in those grants and distributions of territory in all their extent. But where the western boundary of each colony ought to be settled, is a matter which must admit of great dispute, and can, to all appearance, only be finally adjusted by the interposition of Parliament.

[1] Works of Franklin, edited by Sparks, III, 72–3.

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Until these difficulties can be removed it will be impossible to think of forming any solid and advantageous settlement in the midland countries.

Though attempting to restrict settlements and perhaps ultimately to discredit charter claims, the proclamation did not establish a western boundary for the colonies. Not only was it persistently violated, but there is abundant evidence that the colonies were regarded by good authority as extending beyond the mountains after 1763.[1]

By the Treaty of Fort Stanwix in 1768 the Six Nations ceded to the crown their claims to lands south of the Ohio as far as the Tennessee river. A few years later Franklin advanced the argument that the Appalachians should be considered the true western boundary of Virginia; "for," he wrote, "the King was not seised and possessed of a right to the country westward of the mountains, until his Majesty purchased it, in the year 1768, from the Six Nations; and, since that time, there has not been any annexation of such purchase, or of any part thereof, to the colony of Virginia."[2] At the close of the Revolution the American government believed that this treaty would be adduced by the British peace commissioners as an argument against the extension of the United States west of the mountains.[3] The right of the Six Nations to the lands they had ceded was, however, denied by other tribes. Moreover, the British government permitted settlements under the authority of Virginia west of the mountains; for by the treaty of Lochabor, in 1770, it was stipulated that settlements under the government of Virginia should be bounded on the west by a line drawn from the mouth of the Kanawha to a point on the northern boundary line of North Carolina.[4] This disproves Franklin's assertion that no territory west of the mountains was included in Virginia.

From the date of the formation of the Ohio Company in

[1] O'Callaghan, *op. cit.*, II, 577; Archives of Maryland, XIV, 381, 479.

[2] Works of Franklin, edited by Sparks, IV, 324.

[3] Secret Journals of Congress, III, 153.

[4] O'Callaghan, *op. cit.*, II, 543; Collections of the Massachusetts Historical Society, fourth series, X, 725-726.

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1748 to the Revolution the project of a new colony "on the back of Virginia" was in contemplation. Had it not been for the outbreak of hostilities, such a colony would almost certainly have been founded in the Ohio valley. This is shown by the proceedings relating to the proposed colony of Vandalia. Governor Dunmore of Virginia, it is true, opposed the establishment of this colony, and Lord Hillsborough, president of the Board of Trade, in a well-known report written in 1772, urged the discouragement of transmontane settlements and advised the refusal of the petition for the Vandalia grant. The answer made by Franklin to the arguments of Hillsborough was, however, regarded by the Board as so strong that they advised that the grant be made. It was in the course of this answer that Franklin put forward the argument referred to above: that the treaty of Fort Stanwix barred the extension of Virginia beyond the mountains.

The passage of the Quebec Act by Parliament in 1774 involved the most serious attack ever made by the British government on the charter claims of the colonies to the West. By it the whole Northwest, the territory between the Great Lakes, the Ohio and the Mississippi, was included in the province of Quebec. Four colonies, Virginia, New York, Massachusetts and Connecticut, had claims to the whole or parts of this territory. Legally these claims were all nullified by this act. By the revolutionary party in the colonies the most unfavorable interpretation was naturally placed upon it. The First Continental Congress, on October 14, 1774, resolved that the colonists were entitled to all the privileges granted and confirmed by royal charters, and that the Quebec Act was "impolitic, unjust and cruel, as well as unconstitutional and most dangerous and destructive of American rights." The Congress therefore demanded its repeal.[1] It appears, accordingly, that the nullification of colonial claims to the transmontane country by the Quebec Act was considered invalid by those colonists who were soon to take up arms against the mother country.[2]

[1] Force, American Archives, fourth series, I, 910–912.

[2] Secret Journals of Congress, III, 155.

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During the Revolution, indeed, the state of Virginia actually established the county of Illinois in the territory which had been included by this act in the province of Quebec.

On the eve of the Revolution, claims to territory west of the mountains, based on the old colonial charters, were made on several occasions. The rival claims of Virginia and Pennsylvania to the Fort Pitt region were founded on their respective charters. The attempt of the Transylvania Company in 1775 to found a proprietary colony in what is now the state of Kentucky was denounced by both Virginia and North Carolina as a violation of their jurisdictions.[1] In 1774 a project was formed to establish a settlement in that part of the Northwest claimed by Connecticut.

The charter claims of the colonies survived the colonial period and were inherited by the states. For example, the Virginia state constitution of 1776, after confirming to the people of Maryland, Pennsylvania, North Carolina and South Carolina the territories contained within their charters, so far as they had been embraced in her ancient charter of 1609, continues:

> The Western and Northern extent of Virginia shall, in all other respects, stand as fixed by the charter of King James I, in the year one thousand six hundred and nine, and the public treaty of peace between the Courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless, by act of this Legislature, one or more governments be established westward of the Alleghany Mountains.

The effect of the Revolution was to stimulate the charter theory of westward extension. Thoughtful and far-sighted Americans were coming to appreciate the potential value of the West and the desirability of securing it for the United States. Charter claims offered a convenient and easily comprehensible theory for those who believed that the United States should extend to the Mississippi; and a number of states, as is well known, urged their claims to the trans-Appalachian territory during the Revolution. These claims were based on the theory that the states as individual sovereigns had succeeded to all

[1] Ranck, Boonesborough. Filson Club Publications, no. 16, 147–150, 181–182.

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rights which they had possessed when colonies,[1] and that any part of the West claimed by any colony had been, as it were, carried into the Revolution and belonged to the state within whose colonial boundaries it had been included. For example, in the instructions given to John Adams by Congress in August, 1779, after his appointment as commissioner to discuss terms of peace with the British government, a statement was made of the boundaries he was to claim for the United States. He was to contend for the Mississippi as the western boundary, and to urge "that the whole of the said countries and islands lying within the boundaries aforesaid, and every citadel, fort, post, place, harbor, and road to them belonging, be absolutely evacuated by the land and sea forces of his Britannic Majesty, and yielded to the powers of the States to which they respectively belong. . . ."[2] That is to say, the West was to be demanded on the ground that it belonged to one or another of the individual states. This doctrine was clearly stated in a report of a committee of Congress of January 8, 1782. It declared that, under the authority of the English king,

> the limits of these states, while in the character of colonies, were established; to these limits the United States, considered as independent sovereignties, have succeeded. Whatever territorial rights, therefore, belonged to them before the revolution, were necessarily devolved upon them at the era of independence. Those grounds support the assertion that the United States are bounded as they are declared to be in the instructions given to Mr. Adams on the — day of August, 1779.[3]

This contention for the West on the ground of the old charters was strongly urged in a letter written by the American foreign secretary, Robert R. Livingston, in January, 1782, to Franklin, one of the American peace commissioners, for the latter's guidance.[4]

But in spite of these vigorous assertions of the charter theory, the principle of collective control of the West was not lost.

[1] Secret Journals of Congress, III, 170.

[2] Sparks, Diplomatic Correspondence of the American Revolution, IV, 340–341.

[3] Secret Journals of Congress, III, 152.

[4] Sparks, Diplomatic Correspondence of the American Revolution, III, 268 and ff.

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According to a "Sketch of Articles of Confederation," submitted by Franklin in the Second Continental Congress, July 21, 1775, a congress composed of delegates chosen annually in each colony was to settle all disputes between the colonies "about limits or any other cause, if such shall arise; and the planting of new Colonies when proper."[1] In the appendix to *Common Sense*, the most influential pamphlet of the Revolutionary period, Paine called attention to the "back lands" as a common fund which could be used for sinking debts which might be contracted. On December 1, 1776, Silas Deane, then in Paris, in a letter to the Secret Committee of Congress,[2] declared that emigration from Europe to America would be greatly increased by the establishment of American independence. The result of this, Deane said, would be a demand for new lands. "On this demand," he wrote, "I conceive a certain fund may now be fixed," and he referred to the territory between the Ohio, the Great Lakes and the Mississippi "as a resource amply adequate, under proper regulations, for defraying the whole expense of the war, and the sums necessary to be given the Indians in purchase of the native right." But to give this territory value, inhabitants were needed. He accordingly proposed that a grant of land should be made near the mouth of the Ohio to a company of Europeans and Americans. This company, he thought, should form a separate state "confederated with and under the general regulations of the United States General of America." He proposed that Congress should reserve one-fifth of all the lands, mines *etc.* within this grant, "to be disposed of by the Congress in such manner as good policy and the publick exigencies may dictate . . ." In the matter of government Deane thought they should take the advice of Congress. The proposed grant would contain more than 25,000,000 acres, and, if a settlement were made, the one-fifth reserved by Congress would soon be of immense value. "I have spoken with many persons of good sense on this subject," he added, "which makes me the more sanguine."

[1] Force, American Archives, fourth series, II, 1887 *et seq.*

[2] Collections of the New York Historical Society for 1886, 382 *et seq.*

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The idea suggested by Deane had already occurred to Congress. In September, 1776, that body resolved that a bounty of twenty dollars should be given to each non-commissioned officer and private who enlisted to serve during the war, and that provision should be made for granting lands to officers and soldiers who should so enlist. Such lands were to be provided by the United States and the expenses incurred were to be borne by the states in the same proportion as the other expenses of the war.[1] Maryland at once objected to this proposal and entered upon that course of action which was the chief factor in leading to the actual creation of our federal domain. On October 9, 1776, the Maryland Convention resolved:

> That this State ought not to comply with the proposed terms of granting lands to the officers and soldiers, because there are no vacant lands belonging solely and exclusively to this State; the purchase of lands might eventually involve this State in an expense exceeding its abilities; and an engagement by this State to defray the expense of purchasing land, according to its number of souls, would be unequal and unjust.[2]

It appears from a letter written by Samuel Chase, one of Maryland's delegates to Congress, to the Maryland Council of Safety on November 21, 1776, that he and his colleagues from Maryland had proposed and urged in Congress their claim "that the back lands acquired from the Crown of Great Britain in the present war should be a common stock for the benefit of the United States, and should remain open for the determination of some future Congress."[3]

The first draft of the Articles of Confederation was reported to Congress by a committee on July 12, 1776. It provided that the United States should have the power to limit "the Bounds of those Colonies, which by Charter or Proclamation, or under any Pretence, are said to extend to the South Sea" and to assign "Territories for new Colonies, either in lands to be thus separated from Colonies and heretofore purchased or obtained by the Crown of Great Britain from the Indians, or

[1] Force, American Archives, fifth series, III, 53, 209.

[2] Force, American Archives, fifth series, III, 120.

[3] *Ibid.* 788.

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hereafter to be purchased or obtained from them," and to dispose of "all such Lands for the general Benefit of all the United Colonies."[1] When the Articles were being debated in the committee of the whole on July 25, 1776, Chase emphatically stated the Maryland doctrine: "No Colony has a right to go to the South Sea; they never had; they can't have. It would not be safe to the rest." In like vein spoke Wilson of Pennsylvania:

> Every gentleman has heard much of claims to the South Sea. They are extravagant. The grants were made upon mistakes. They were ignorant of the Geography. They thought the South Sea within one hundred miles of the Atlantic Ocean. It was not conceived that they extended three thousand miles . . . I wish the Colonies themselves would cut off these claims.

On the other hand, Jefferson, who was opposed to the Maryland doctrine, asked: "What are reasonable limits? What security have we, that the Congress will not curtail the present settlements of the States? I have no doubt that the Colonies will limit themselves." And a few days later Harrison of Virginia inserted: "Virginia owns to the South Sea. Gentlemen shall not pare away the Colony of Virginia." And Huntingdon said: "I doubt not the wisdom of Virginia will limit themselves. A man's right does not cease to be a right, because it is large; the question of right must be determined by the principles of the common law."[2] The clauses of the first draft of the Articles of Confederation which have been quoted were omitted in the subsequent and final drafts.

On October 15, 1777, it was moved in Congress

> that the United States in Congress assembled, shall have the sole and exclusive right and power to ascertain and fix the western boundary of such States as claim to the Mississippi or South Sea, and lay out the land beyond the boundary, so ascertained, into separate and independ-

[1] Journals of the Continental Congress, edited by W. C. Ford, V, 550–551.

[2] See Notes of Debates in the Continental Congress, by John A. Adams, in Journals of the Continental Congress, edited by W. C. Ford, VI, 1071 *et seq.*

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ent states, from time to time, as the numbers and circumstances of the people thereof may require.[1]

Maryland alone voted in the affirmative. The opposition was at this time so strong that the states with claims to western lands succeeded in adding a clause to the ninth of the Articles of Confederation, "that no State shall be deprived of territory for the benefit of the United States."

With the exception of Maryland, the states which had no claims to the West held that the vacant lands should be used for the fiscal benefit of the Confederation, but that the jurisdiction over them should be vested in the state to which the territory in question was nominally attached.[2] Maryland, however, on December 15, 1778, instructed its delegates in Congress not to ratify the Articles of Confederation until the land claims had been placed on a different basis, and by this determined attitude brought about the solution of the problem: the cession by the states to Congress of their western claims. New York led the way; in February, 1780, it passed an act empowering its delegates in Congress to limit the western extension of the state by such a line as they should deem expedient, both with respect to ownership and jurisdiction, provided that the territory which might be so ceded should be used for the benefit of the states which should become members of the federal union.[3] In September of the same year Congress recommended that those states which had claims to the West should pass such laws "as may effectually remove the only obstacle to a final ratification of the Articles of Confederation."[4] By 1786 Virginia, New York, Massachusetts and Connecticut had ceded their claims to the territory northwest of the Ohio, with the exception of Connecticut's Western Reserve, and the way was open for Congress to organize it as a federal domain. South of the Ohio the states continued for several years to claim the

[1] Journals of the Continental Congress, edited by W. C. Ford, IX, 807.

[2] Welling, The States Rights Conflict over the Public Lands. Papers of the American Historical Association, III, no. 2, 169.

[3] Hening, The Statutes at Large of Virginia, X, 560 *et seq.*

[4] Hening, *op. cit.*, X, 563.

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territory as far as the Mississippi. But though the position assumed by Maryland brought about this result, it was not effected in the way Maryland had suggested. To persuade the claimant states to cede their western claims to Congress was not the same thing as asserting the sovereign power of the United States over the West without waiting for cessions.[1]

While the Revolutionary War was in progress the status of the West was seriously debated outside the halls of Congress and the state legislatures. In the pamphlet *Public Good*,[2] published in 1780, Paine supported the Maryland doctrine, advancing several arguments for the purpose of demolishing Virginia's claims to the transmontane country. He distinguished three classes of land in America on the eve of the Revolution: proprietary or chartered land, crown lands within the limits of a crown government, and crown residuary lands outside the limits of any province. The West he included in the last category. "The succession of the United States to the vacant Western territory," he said, "is a right they originally set out upon: and in the pamphlet 'Common Sense' I frequently mentioned those lands as a national fund for the benefit of all . . ." He suggested that a large revenue might be created if Congress would lay off a new state and open land offices in the European countries. For such a state, he thought, the United States ought to establish a constitution to be in force for a certain period, or until the population reached a certain number, when the people of the state should have the right of forming their own government. It might be advisable, he thought, to admit the representatives of such a new state to Congress at once, to sit, hear and debate, but not immediately to vote.

In an essay on the subject of the western lands published the next year, Pelatiah Webster[3] referred to the "madness, short-

[1] Hindsdale, The Old Northwest, 249.

[2] This pamphlet is printed in The Writings of Thomas Paine, edited by Moncure Conway, II.

[3] An Essay on the Extent and Value of our Western Unlocated Lands and the Proper Method of disposing of them so as to gain the greatest possible advantage from them. First published in Philadelphia, April 25, 1781. Included in Political Essays on the Nature and Operation of Money, Public Finances and Other Subjects, by Pelatiah Webster, Philadelphia, 1791.

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sighted policy, and public mischief, of a late pamphlet, entitled Public Good, which, by very weak and trifling arguments, attempts to limit the territory of Virginia to a very inconsiderable part of its original and true extent." He thought that "some note of disapprobation should be fixed on that treatise, lest it should be produced in future debates, as a proof of the general sense of the States at this time." The aggregate of the territory of the several states, Webster argued, equaled the whole territory of the United States. A claim to territory outside the limits of the states could be claimed for the United States only on the ground of conquest. Wherever the "exterior limit" of any state was fixed, there was the boundary of the United States. It was, therefore, to the advantage of the United States to extend the exterior boundary of each state as far as possible. The boundaries of the several states, in Webster's opinion, were to be ascertained from their original charters, "with such construction as has obtained by subsequent usage, judicial decisions, or any other acts of the crown or the inhabitants, which tend to give them a determined and fixed definition." In general, the western boundary of the states was the western boundary of the dominions of the crown at the date of independence. But ascertaining the boundaries of a state, according to Webster, did not prove the title of the state to all lands included within those boundaries. He distinguished between lands the title to which, at the date of independence, was vested in individuals, and lands the title to which was held by the crown, as a right vested in the supreme authority in the nature of a trust for the public. Lands of the latter class, he held, "must pass by the Revolution into the supreme power of our Commonwealth, *i. e.* into the Congress, and be vested in them in trust for the public use of the body politic, of which they are the supreme power, and the right of tenure and alienation must be vested in them alone." No one state, in his view, was more entitled to crown lands than another; and the states with western claims should cede them to the United States, the lands to remain a common stock till they could be disposed of for the good of all.

In their views on the West, Paine and Webster were both

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nationalists. In the theories which they urged to support their contentions, however, they differed. According to Paine, the West lay outside the limits of the colonies at the beginning of the Revolution, and therefore the individual states could have no valid claim either to its ownership or jurisdiction. Webster perceived the element of danger in this argument in the basis it might afford to the British government in the future peace negotiations for a claim to the retention of the West. The West he would regard as crown territory within the colonies, the title to which, as a result of the Revolution, rightfully passed from the old to the new sovereign power, from crown to Congress.

In the course of the long conflict between the claimant and the non-claimant states respecting the West, Congress contented itself with recommending and accepting cessions from the former. It advanced no theoretical claims in its own right, such as had been urged by Maryland. Such a claim, however, was discussed in connection with the peace negotiations at the close of the war. On August 16, 1782, a committee of Congress, which had been collecting material to be transmitted to the American peace commissioners, made a report. With respect to the boundaries of the United States, the various charters under which the states claimed were enumerated.[1] In the committee's opinion it was necessary for the peace commissioners of the United States to show "that the territorial rights of the thirteen United States, while in the character of British colonies, were the same with those defined in the instructions given to Mr. J. Adams on the — day of August, 1779"; and "that the United States, considered as independent sovereignties, have succeeded to those rights"; or, "that if the vacant lands cannot be demanded upon the preceding grounds, that is, upon the title of individual states, they are to be deemed to have been the property of his Britannick majesty immediately before the revolution, and to be now devolved upon the United States collectively taken."[2] If it were argued that the possession of the vacant lands continued of right to be

[1] Secret Journals of Congress, III, 167 and ff. [2] *Ibid.* 170.

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vested in the crown, the Americans could answer that the character in which the king had been possessed of those lands

was that of king of the thirteen colonies collectively taken. Being stript of this character, his rights descended to the United States for the following reasons:

1. The United States are to be considered in many respects as one undivided independent nation, inheriting those rights which the King of Great Britain enjoyed as not appertaining to any one particular state, while he was what they are now, the superintending governour of the whole.

2. The King of Great Britain has been dethroned as King of the United States, by the joint efforts of the whole.

3. The very country in question hath been conquered through the means of the common labours of the United States.[1]

The committee evidently felt that in demanding the West the American government had two strings to its bow, and that if either broke, the other might accomplish the desired result.

In the course of the negotiations which culminated in the provisional treaty signed by the British and American commissioners on November 30, 1782, the question of boundaries was naturally debated at length. The Americans urged charter claims as ground for the extension of the United States to the Mississippi, and the British were naturally disposed to make light of them. It is not likely, however, that abstract theories had much to do with the settlement of the boundary question and the abandonment of the transmontane country by Great Britain. As for the actual creation of a federal domain in the West, that was, as we have seen, made possible by voluntary cessions of claims by the states to the United States.

ROBERT LIVINGSTON SCHUYLER.

[1] *Secret Journals of Congress*, III, 198–199.

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REVIEWS.

Seward and the Declaration of Paris. A Forgotten Diplomatic Episode, April–August, 1861. By CHARLES FRANCIS ADAMS. (Prepared for the Massachusetts Historical Society, October, 1912.—66 pp.)

The fame of William H. Seward as a statesman has suffered damage since the close of the civil war, but we hardly expected to find a member of the Adams family passing an unfavorable judgment on him. Such a judgment we now have from the son of our war-time Minister at the Court of St. James. It is a reluctant judgment, since it goes counter to earlier published opinions of the same author, and to those of his father and brother. Mr. Adams finds that Seward was incompetent to handle the diplomatic questions which came before him at the beginning of the war, that his self-conceit, coupled with his ignorance of international law, made him a dangerous element in the complications of the time and that his course in dealing with Great Britain in weighty matters was "incomprehensible." The tenor of the investigation leads to the belief that if Mr. Seward had not been restrained by a stronger hand than his own we should have been engaged in hostilities with England, and perhaps with France also, even before the battle of Bull Run was fought.

The confusion in our foreign relations at the beginning of the war grew out of Mr. Seward's attempt to give our adhesion to the Declaration of Paris, in respect of privateering, in such way as to include the Confederates, whom we claimed as still a part of the United States, but at the same time to hold the rod of privateering over the heads of England and France in the event that they should not accept our view of the legal effect of such adhesion. In the words of Mr. Adams:

> He [Seward] wished to do and yet not to do. He wanted to commit the insurgents as included in the sovereignty of the United States, but not to include the United States in case of hostilities with European powers growing out of existing complications. He could not bring himself to admit that a blockade, conducted under the rules of international law, was impossible except as an act of belligerency, and that belligerency implied two parties to it.

The attitude of Seward toward foreign countries at the beginning of

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the war is comprehensible if we bear in mind the fact that he wanted to change the issue before the public from one upon slavery, or about slavery, to something else. This was embodied in his paper entitled: "Some Thoughts for the President's Consideration," dated April 1, 1861. He there said that he desired to change the issue to "a question upon Union or Disunion;" but he failed to show any distinction between slavery and disunion as public issues. He proceeded to advise the President to take steps looking to war with France and Spain and to some kind of imbroglio with Great Britain and Russia, and to send agents to traverse Canada, Mexico and Central America in order to stir up the people against European intervention. He thought that a foreign war would submerge the misunderstanding between Massachusetts and South Carolina and bring their discordant factions to a loving embrace. The thing incomprehensible is that Seward, who had been in the thick of the slavery turmoil for so many years, and had become the real leader of one party, should have formed so inadequate a conception of the character and the purposes of the other party. One of the most characteristic and dramatic episodes contained in the diary of Gideon Welles is his account of an interview between Douglas and Seward, showing how perfectly the former had "sized up" the secession movement and how miserably the latter had failed to do so.[1]

We can now understand the frame of mind with which our secretary of state took up the question of giving, or not giving, adhesion to the Declaration of Paris, which abolished privateering. His despatch to Minister Adams of May 21, 1861, contained much misinformation respecting the laws of blockade and privateering, and a veiled threat to use the latter as a weapon against any countries which should render substantial aid and comfort to the Confederates. What acts would be construed as rendering such aid and comfort was left vague, but the holding of any intercourse, official or unofficial, by the British government with "the domestic enemies of this country," Mr. Adams was to regard as the signal for terminating all his intercourse with that government. The next step might have been war with England, but fortunately the vitals of the despatch of May 21 were edited out by Lincoln, and the delivery of it, or any part of it, to the British government forbidden by him. That Sumner was cognizant of the writing of this despatch is made apparent by a contemporaneous letter from Richard H. Dana to Minister Adams saying that Sumner had just returned from Washington "so full of denunciations of Mr. Seward that it was

[1] Diary of Gideon Welles, I, 32 ff.

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suggestive of a heated state of brain." Sumner said that Seward was "pursuing a course of correspondence, language and manner calculated to bring England and France to coldness, if not to open rupture."

Another point made clear by Mr. Adams in the paper under discussion is that the danger threatening our commerce from privateers at the beginning of the war was very slight, since the Southern ports were blockaded, and foreign ports, under the Declaration of Paris, could not be used for the reception and adjudication of prizes. Without an opportunity to dispose of their catch, the privateers could not make a living. Moreover, privateering under sail was not of much account as against ships propelled by steam and the Confederates had not a shop in which a marine engine could be built. But neither Seward nor Jefferson Davis considered these things. Both were befogged by reminiscences of the War of 1812, when privateering with sailing craft was a terror to merchantmen. Davis believed that he could cover the waters of the globe with letters of marque and sweep Northern commerce from the ocean. Seward believed likewise. Yet Northern commerce was not seriously harmed by privateers during the war.

Allusion is made to the Harvey affair, one of the most mysterious incidents of the time. Concerning this, Mr. Adams says:

> There is ground to believe, although on this head the evidence is not absolutely conclusive, that so intent was Seward on at any rate postponing a civil war outbreak, in the hope that a foreign complication could be substituted therefore, that when the Fort Sumter expedition was in course of preparation he caused secret advices thereof to be conveyed to the Confederate authorities, apparently with a view to having the expedition fail without bringing on an irrevocable crisis.

The instrument Seward made use of for this purpose was a newspaper correspondent named Harvey, a native of South Carolina, to whom he imparted the secret that an expedition had been ordered and was about to sail, to supply Fort Sumter with provisions. Harvey was the only correspondent who had the news and he promptly telegraphed it on April 6th to Governor Pickens. That Seward intended he should do so is evident. "Not only had he given Harvey the information," says Mr. Frederic Bancroft, in his *Life of Seward*, "but he knew of the telegram the day it was sent." A little later Seward caused Harvey to be appointed Minister to Portugal, and when a Senate Committee demanded that the appointment be canceled he said that he did not know of the sending of the despatch to Pickens until after the appoint-

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ment had been made,[1] that when he did learn of it he was indignant and advised the President to revoke the appointment, "but thinking it over coolly," he added, "I thought it wrong to punish a man for his stupid folly, when really he had committed no crime." Harvey was not recalled. The Harvey incident was one of the maddening events of the period. It was one of the most potent causes of the public animosity to Seward which culminated later in the Senatorial demand for his removal from the cabinet.

Mr. Adams's paper vindicates Earl Russell, the British Foreign Secretary, from the suspicion of duplicity or of unfriendliness to the United States during the trying period of our Civil War, and this feature alone would make it a welcome contribution to the history of the great events there reviewed.

HORACE WHITE.

NEW YORK CITY.

The Old Colonial System, 1660–1754. Part I. The Establishment of the System, 1660–1688. By GEORGE L. BEER. New York, The Macmillan Company, 1912.—Two volumes; xvi, 381; vii, 382 pp.

As the title indicates, this is the first instalment of a large work, which, as the author tells us, will "describe the establishment, development and operation of the English colonial system from the days of its formal creation down to the period leading to its disintegration." Hence the present volumes must be viewed in the aspect of a partial contribution to the narrative of the colonial system in its entirety, and not as a complete piece of work.

Volume I describes the colonial system as a whole. The subjects treated are well indicated by the chapter headings: the colonial policy of the period, laws of trade and navigation, English fiscal system and imperial finance, central and local administrative machinery, the slave trade and plantation colonies. Volume II describes the operation of the system in the various colonies: Barbados and the Leeward Islands, Jamaica and the outlying islands, Virginia and Maryland, the Carolinas, Newfoundland, Massachusetts and the Dominion of New England.

As in Mr. Beer's former volumes, the point of view is imperial rather than provincial. The material is drawn largely from British sources and little use is made of material of a purely local character. To a

[1] Trumbull MSS. Letter of Trumbull to his wife, July 14, 1861.

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preponderant extent, even more so than in the same author's *British Colonial Policy*, the story is gleaned from original manuscripts in the Public Record Office and the Privy Council Office in London, England. These manuscripts are copiously cited and quoted in the footnotes, which furnish a ready key to all of this voluminous material and thereby afford future students a great saving of labor.

The American colonies were generally established as commercial enterprises. Mr. Beer therefore seeks to explain legislation and governmental regulations by pointing out the economic conditions which induced them. England was dominated by statesmen who accepted without question the conclusions of the Mercantilists. The ultimate aim of all colonial regulations was to obtain from the colonies such products as England could otherwise secure only from foreign countries. This policy is reflected in the navigation laws, tariff regulations, bounties, rebates and discriminating duties.

Mr. Beer has treated his subject in a most scholarly manner and the two volumes are a veritable mine of information. In dealing with the West Indies and the slave trade he clearly breaks new ground. He has touched here a field which has been neglected and one which will richly repay further investigation. The importance of slave labor to the development of the sugar and tobacco plantations and the inevitable clandestine relations with Spanish planters engaged in similar industries are set forth at considerable length. The efforts of the government to supply the plantation colonies with slaves is also treated quite fully. One of the striking points brought out in the discussion of the trade policy of England is the general good faith of the colonists in obeying the trade regulations, even when such regulations were burdensome. It would seem that smuggling as a business did not develop until the next century.

Since the author is interested primarily in economic history and only secondarily in details of administration, the present volumes contribute little that is new to our knowledge of colonial administration. Industrial questions, however, are discussed in a most illuminating way. On nearly every page one meets with new material or with a new point of view. This is especially true in the discussion of the Navigation Acts of 1660, the Staple Act of 1663 and the Plantation Duties of 1673, and their effect upon each individual colony and the plantation trade.

The author keeps constantly in mind the whole British Empire as well as the colonies, and again and again shows the intimate relation of restrictions upon Irish and English trade and industries and the fiscal

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system as applied to the colonies. One of the best examples of this appears in his vivid description of the destruction of the growing tobacco industry in England because of the effect of English production upon the Virginia industry. Most Americans will learn here for the first time that tobacco was successfully grown in England and that the British government was ever willing to destroy a home industry to encourage a colonial one.

The volumes are solid reading. Only persons with a keen appetite for historical literature are likely to read them for pleasure, but they are destined to be widely read and referred to by scholars. The only adverse criticism that can well be made relates to the matter of arrangement. The order of treatment adopted has inevitably led to considerable repetition, in the second volume, of material which had already been presented in the first. Perhaps this has been done deliberately, as the usually full summary of source material tends to give to certain chapters in the second volume, especially those on the sugar islands, the general effect of a well-arranged appendix to volume one. Each volume is supplied with a table of contents in which each chapter is carefully analyzed. At the end there is a detailed analytical index with references to text, notes and sources.

The final judgment upon the volumes must be highly favorable. They are a splendid product of painstaking, scholarly work in a field that needed careful investigation. Mr. Beer's familiarity with his background and his mastery of scientific method are an earnest that his future labors will be as fruitful as those for which we are already indebted.

O. M. DICKERSON.

MACOMB, ILLS.

A Life of Andrew Jackson. By J. S. BASSETT. New York, Doubleday, Page and Company, 1911.—Two volumes: viii, 766 pp.

Professor Bassett states his reason for adding another to the numerous lives of Jackson as being a desire "to present a true picture of the political manipulations which surrounded him and in which he was an important factor," and "to show the exact trace he left in the nation's history." He intimates that none of Jackson's other biographers has satisfactorily accomplished this purpose. According to the author, Parton dwelt on the personality of Jackson to the neglect of the general history of the period. Neither Professor Sumner nor W. G. Brown meant his book to be a comprehensive presentation of Jackson's career. "The recent disclosure of much manuscript material made it possible

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to write a more intimate and complete biography than either [Professor Sumner or Mr. Brown] undertook to produce." This material includes the so-called "Jackson Manuscripts," now in the Library of Congress, the Ford collection in the New York Public Library, and a few other collections of lesser importance. Upon these manuscripts the author bases most of his opinions of Jackson's motives and character, for he believes them the best portrayers of the man.

In the opinion of the reviewer, the three most fundamental qualities that a biographer should possess are: first, a sympathetic feeling for the man or woman whose life's story he is narrating; second, aloofness or disattachment from preconceived notions and prejudices; third, a thorough knowledge of the history of the period during which the person lived. These qualities Professor Bassett possesses. He has succeeded in projecting himself into the spirit of the times in which Jackson lived and in dealing with him as he was—the product of the first great democratic wave which swept over the country as a protest on the part of hardy, uneducated and uncultured frontiersmen against the more or less aristocratic hegemony which had controlled the national government during the first four decades of its existence. The author holds no brief for any particular party or theory of government. His opinions are those of an unbiased historian, far removed from the prejudice of the special pleader. Neither is he a hero worshiper. He neither exculpates Jackson for blunders due to poor judgment or hot-headed passion, nor does he blame him for faults which were inherent in the cause he championed rather than in himself. Finally, Professor Bassett is an authority on the political history of the period covered by his biography.

If the three essentials just stated were the only qualities necessary for writing a successful biography, little fault could be found with this life of Jackson. But for good literary work of any sort other things are necessary. Among these are brevity and proportion. Why should any "life," especially one that is not a "life and times," cover 766 pages? In the opinion of the reviewer, one of the best, if not the very best, of biographies is that of Count Cavour by Cesaresco. It covers little more than 200 pages, and yet it gives an adequate account of the great events in which Cavour took such an important part, and at the same time presents an almost perfect interpretation of the man's character and motives. In the book under consideration a great many matters which seem trivial and unimportant are dealt with at length. Thus we find space given to the old controversy whether Jackson was born in North or South Carolina, and to the question whether he paid a certain board bill which it was afterwards claimed

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he did not pay. We learn who were Mrs. Jackson's relatives and how unfortunate it was that Jackson married his wife before she had been legally divorced from her first husband. A whole chapter is devoted to his early quarrels. To more important matters relatively less attention is given. With the exception of his part in the Battle of New Orleans and in the presidential campaign of 1824, the preponderating influence of Jackson in American history came during the eight years when he was president. Yet less than one-third of the entire two volumes deals with that period. Still one is not inclined to complain that too little space is given here; the trouble is that too much is given elsewhere.

The book is not free from contradictions. One example will suffice. "Jackson was not a generous foe" (I, 141). "Under normal conditions he treated his antagonist with the considerations of a brave man, who is not afraid to be generous" (I, 207). Some of Professor Bassett's opinions, however, are so unbiased, so full of wisdom and altogether so admirable that the temptation to quote a few of them cannot be resisted. Of Jackson as a prosecuting attorney it is said: "His speeches were brief and not much interrupted by taking up law books; but they were filled with common sense. His cases were rarely postponed to suit the convenience of lawyers. When he left the court his docket was apt to be clean" (I, 22). In general, Professor Bassett's interpretation of Jackson's character is excellent. The following statement is suggestive both of his character and of his ability as a politician. "Jackson was not a tool of his subordinates. Ordinarily he was a shrewd politician, and his course was not so much shaped by impulse as we are apt to think. He was a man of the people, sharing their opinions of government, their suspicions and their credulity" (II, 379).

One of the best chapters in the book is that on the spoils system. The following seems to be a fair statement of the extent to which Jackson was responsible for it. "Jackson did not create the spoils system: it came with new conditions. His responsibility was that he did not oppose but approved it, through his sympathy with the new party ideals" (II, 437). Excellent also are the chapters on nullification, the destruction of the United States Bank and Jackson's personal characteristics. The following is a summary of his political philosophy and a suggestion of its practical operation:

> Jackson's political philosophy embraced obedience to his authority, hatred of monopoly, and courage to carry out his purposes. The first and third united to shape his course on nullification; the second and third united to

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direct it in the other great crisis of his career, the struggle against the Second United States Bank [II, 583].

With the exceptions pointed out, lack of brevity and of proportions, Professor Bassett has written an admirable biography. But, as said before, it is *A Life of Andrew Jackson* pure and simple, practically no account being taken of the social and economic questions of the day except as they became live political issues confronting the administration between 1829 and 1837. Finally, and what seems more strange, Professor Bassett does not choose to attempt an explanation of the origin and development of that democracy of which Andrew Jackson was at once a product and an exponent.

BENJ. B. KENDRICK.

COLUMBIA UNIVERSITY.

Economic Beginnings of the Far West. By KATHARINE COMAN. New York, The Macmillan Company, 1912.—Two volumes: xix, 418; ix, 450 pp.

Works on the general history of the West are so rare that a new treatise awakens unusual attention. In some measure the scarcity may be attributed to the inclination of most writers to regard the development of the United States as a process inherently associated with the original thirteen commonwealths. Whatever occurred beyond their limits is presumably incidental. A more cogent reason is the one that rises out of the difficulty of finding the sources for the preparation of any such work. This task of discovery, in the case of the area between the Appalachians and the Mississippi, is far from easy; but the search for material bearing upon the country between the Mississippi and the Pacific is harder still, particularly since so little secondary material of value is available.

If Professor Coman's volumes are intended to be a serious contribution to scholarship, the facts just stated have great force in determining an estimate of it; but if they are designed to furnish a westward continuation, so to speak, of Roosevelt's *Winning of the West*, criteria of another sort must be employed. An examination of the work shows that it falls somewhere between the two purposes, with a decided balance in favor of the second. The reader who enjoys interesting narrative, agreeably and even graphically told, about the way in which the West beyond the Mississippi was discovered, explored and occupied, will find it here presented. In fairness, therefore, to such a reader, no less than to the author, any allusion to defects that dis-

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turb the "special student," who is, after all, the lesser beneficiary, must be kept within bounds.

The subject matter is divided into five parts. In the first volume, which bears the title "explorers and colonizers," the themes treated are "the Spanish occupation" and "exploration and the fur trade," bringing the story substantially to the opening of the nineteenth century. The second treats of "the advance of the settlers," "the transcontinental migration" and "free land and free labor," closing the recital about 1860. In each part the arrangement is chronological, geographical and topical. Both volumes are well illustrated.

Frankly, the reviewer cannot understand why a political history of the region between the Mississippi River and the Pacific Ocean, from early times to the eve of the Civil War—for such is essentially the character of the work—should be called "Economic Beginnings of the Far West." Former usage, also, of a geographical term hardly justifies a confusion of its present meaning. The relegation of foot notes to the end of the volume, there to be arranged under part and chapter headings and followed by bibliographies similarly put together, seems an unreasonable concession to the "general reader." Nor is it clear why some of the most important and accessible materials, alike original and secondary, are nowhere mentioned, or why the geographical environment in which the economic beginnings developed is practically ignored. To numerous assertions in the preface, moreover, no less than to many in the text, a historian must take decided exception, whether they be the views of a "mere economist" (preface, page viii), or not.

W. R. SHEPHERD.

Lord Durham's Report on the Affairs of British North America. Edited with an Introduction by Sir C. P. LUCAS. Oxford, Clarendon Press, 1912.—Three volumes: 335; 339; iv, 380 pp.

The revival of interest among Englishmen in the oversea dominions has led to several republications of the famous Durham Report on political conditions in Upper and Lower Canada in the decade that preceded the Papineau and Mackenzie rebellions of 1837. Timely and serviceable as these republications were, none was characterized by the fullness and completeness which give chief value to this new edition. The first of the three volumes is introductory, written by the editor; the second is devoted to the Report itself; the third contains Charles Buller's sketch of the mission, here published for the first time, and reprints of all the appendices to the Report which are likely to be of any value to students of Canadian constitutional history.

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The first volume opens with a brief biography of Durham. In domestic politics Durham was a pronounced radical, but on questions of colonial policy his views were diametrically opposed to those of the Manchester school. Lucas describes him as an aristocrat in temper and habits, lordly and imperious and fond of pomp and circumstance—a description that must be accepted as true by readers of Mr. Stuart Reid's detailed biography of Durham, published six years ago. Lucas, who has probably given longer and closer study to colonial history than has any other man in England, and who abundantly realizes the value of Durham's service to the empire, regards him as a man of high character, transparent honesty, great courage and promptness and strong convictions. But Durham had also the faults that often go with these virtues; and Lucas only reiterates the impressions of Durham's contemporaries—impressions that are recorded in the autobiographies and letters of men who were closely associated with Grey in carrying the Reform Bill of 1832 through Parliament—when he describes Durham as masterful and arrogant, with a self-will intensified by want of health and by having come into his kingdom in early boyhood. These traits made him an uncomfortable colleague, impatient of contradiction and restraint; but his masterfulness served England well at the great crisis in the history of parliamentary reform, and equally well in what was the greatest crisis in the history of England's oversea dominions between the loss of the American colonies and the outbreak of war in South Africa in 1899.

In even so brief a sketch of Durham's career as Lucas gives us, it was not possible to ignore the controversy as to whether Durham actually wrote what is regarded as the greatest state paper in the archives of the Colonial Office. But this question is dismissed in half a page. Lucas takes it for granted that no one supposes that Durham drafted every line of the Report. On the other hand he insists that a man of Durham's character can not be supposed to have allowed anybody to dictate what he was to recommend to the government. In a passage to which Lucas's long connection with the Colonial Office lends a certain authority, he writes:

> When despatches or state papers are published bearing the signature of one minister or another, it is not to be supposed that they have in all cases been written word by word from beginning to end by the man who signs them. Yet every such document is presumed to embody his instructions, to have been under his eye and corrected by his hand, and bearing his signature is credited to him for good or ill. Whether Lord Durham's pen actually wrote much or little of the Report, in form and substance it is his and his alone, able as were the members of his staff.

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In estimating Durham's services to the development of representative and responsible government in the oversea dominions, Lucas recalls the fact that Durham was not the first British statesman to urge the reunion of Upper and Lower Canada, nor was he the first statesman to realize that responsible government must be conceded to what are now the oversea dominions. Durham's merit, in Lucas's opinion, is in his advocacy of a generous measure of colonial self-government in the form in which it existed in the United Kingdom, in the force and clearness with which he pointed out existing evils in the Canadas and the remedies that must be applied, and above all:

> in the statesmanship with which, not content with generalities, he prescribed definite and immediate action; and the courage and insight, amounting to genius, with which he gave to the world the doctrine of responsible government, not as a prelude to the creation of separate peoples, but as the cornerstone upon which a single and undivided British Empire should be reared in abiding strength.

The same qualities that made Durham a difficult colleague made him exceptionally available for the mission to Canada in 1838. His availability may seem an accident; but, in view of the little that had been accomplished by the commissioners who had preceded him, and in view of the conditions in both Canadas—conditions that had been steadily growing worse,—it was the most fortunate accident in the history of England's relations with her colonial possessions.

In his introduction to the Report, Sir Charles Lucas undertakes to give somewhat detailed answers to six questions: (1) What were the political conditions prevailing in the United Kingdom and in the British Empire at the time of Durham's mission? (2) What was the position in Upper and Lower Canada? (3) What were the terms of Durham's commission? (4) What was in brief the scope, character and substance of the Report? (5) How far, in the light of the present day, did Durham read the past correctly; how correctly did he forecast the future of Canada; and how far were his recommendations adopted? (6) How far are the principles Durham laid down of universal application? There will be some difference among students of Canadian history concerning Lucas's conclusion that there was no real justification for the Papineau and Mackenzie rebellions; for it is probable that there would have been no Durham mission had it not been for the uprisings in Upper and Lower Canada. But there will be little disposition to criticize Lucas's estimate of Sir Francis Bond Head as a man who was dangerous and flighty in the extreme; and none whatever

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to question his assertion that there never was a British government more anxious to work in harmony with public feeling in a colony than was the British government in its relations with Lower Canada in the two years that preceded the rebellion of 1837. No crisis in British colonial history in the century that followed the Declaration of Independence was more important than that which led to the Durham mission; and in these first two decades of the twentieth century, when the oversea dominions are attracting continuous attention in England, chiefly because they have obviously made a success of responsible government, Sir Charles Lucas has rendered excellent extra-official service to the Empire by his production of this edition of the Durham Report and by the admirable framework in which it is presented.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

South America: Observations and Impressions. By JAMES BRYCE. New York, The Macmillan Company, 1912.—xxiv, 611 pp.

Of James Bryce it has been said truly that he is a "connoisseur of societies and possessed of an educated taste in civilization." The reputation that he has won in a life devoted to public service rivals that which he has earned by his contributions to political literature. Whatever he writes is sure to be widely read and to please his readers. Yet it may be questioned whether his *South America* will add anything to his fame.

The book deals with the entire group of republics in the New World which have received the collective designation of "Latin America" and must be examined from this point of view. With all Mr. Bryce's breadth of knowledge and keenness of observation, the impressions which he has garnered as the fruits of a four months' journey, even if ripened by incidental reading and conversation, can not be invested with more than a moderate degree of authority. What was possible in the preparation of his masterly treatises on the United States and on South Africa is quite impossible in the case of Latin America, because the information is more difficult of access and what is accessible is less trustworthy. Years of patient investigation must be spent ere one is in a position to describe the past and present, to say nothing of the future, in Latin America. Moreover, competence in this field is not wholly a matter of finding the best sources of knowledge and of giving the necessary time to the searching for information. It depends largely on an attitude of mind. No one can hope to gain an insight into the char-

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acteristics, the ideas and the institutions of the Latin-Americans unless he understands thoroughly the European language spoken by most of them. Probably no American people, nor the European ancestors of any American people, have been so inadequately comprehended and so gravely misjudged as those of Spanish and Portuguese stock. To remove this misunderstanding and to correct this misjudgment, so far as reason and fairness demand, calls for expert, discriminating knowledge both of the speech and of the records. Such intimate knowledge Mr. Bryce makes no pretence of possessing.

Of the sixteen chapters in his work, eleven are devoted to a description mainly of six South American countries, with excursions into history, archæology and ethnology, enlivened at times by so interesting an episode as the love affairs of the nun of *Nuestra Señora de los Dolores* of Arequipa. The interest of the narration is enhanced by the author's distinctive charm of style. The accounts of natural scenery make agreeable reading and the comparisons drawn between South American scenery and that of other countries are interesting. The historical allusions, however, are so frequently erroneous as to make their chief service the confirmation of existing misconceptions. If Mr. Bryce had read Bourne's *Spain in America* or Kirkpatrick's monographs in the *Cambridge Modern History*, he would not have condemned the Spanish colonial system in so dogmatic a fashion.

Beyond doubt the general observations and impressions contained in the last five chapters of the book, and dealing with political, economic and social phenomena, are the best to be found anywhere in English. While accurate, profound and instructive, as contrasted with the views supplied by most of the other publications in that language, they nevertheless reveal at times a lack of intimacy with the subject. Had the author possessed that intimacy he would not have dwelt so insistently on the scant amount of intellectual, scientific and artistic progress in the Latin-American countries. Had he been acquainted with Latin-American literature in the vernacular, he would not have implied that the bent of the Latin-American mind has been practical rather than idealistic, nor would he have assumed that the "fountain of pleasing verse" has been virtually the sole form of literary expression.

Had Mr. Bryce fully understood what the word "politics" means in Latin America, he might not have made so many disavowals of any intention to discuss the theme. He does not seem to realize that political history there is commonly identified with present politics, to such an extent that, even in scientific congresses, the word "history" is taboo among the Latin-American delegates. The constitutions of

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the Latin-American countries, furthermore, as a whole or in the great majority of cases, are not modeled upon that of the United States so much as upon the fundamental law of France. How otherwise is one to explain that, in form alone, the government of sixteen out of the twenty republics is unitary and not federal?

The limits of this review might be prolonged unduly were the reviewer to point out in detail specific instances in which Mr. Bryce has given too great credence to untrustworthy sources of information and in which therefore his statements and assumptions are beside the mark. Compared with other books on the same theme, his book unquestionably is valuable. It must, however, be regarded as unsatisfactory when judged by the high standard of his own previous works on other lands and peoples. But it professedly consists of observations and impressions.

W. R. SHEPHERD.

Die ökonomische Entwicklung Europas. Vol. VI. *Das Verschwinden der Börigkeit und die Wandlungen der Grundherrschaft in England und Italien. Bauernbefreiung und Grundentlastung in Deutschland und Russland.* By M. KOWALEWSKY. German translation by A. STEIN. [Bibliothek der Volkswirtschaftslehre und Gesellschaftswissenschaft. Vol. XVI.] Berlin, R. L. Prager, 1913. —501 pp.

Professor Kowalewsky has reached the end of his period but not of what he has to say about it. This fact and the recent agrarian legislation in Russia, in which he himself took part, account for the extension of his original plan, upon which the work was to have been completed in six volumes. We are now promised a seventh volume, which is to contain an account of the rise of peasant proprietorship in France, and an eighth, which is to be devoted to a discussion of the theories of the leading economic historians of England, France, Germany and Italy with regard to mediæval economy.

The general character and the special strength and weakness of Professor Kowalewsky's work have long been recognized. It is a compendium, which aims, as its title indicates, at giving a general view of the economic development of Europe throughout the middle ages. It is something else besides, as will presently be shown; but for the moment we are concerned with its immediate purpose. In the discharge of his task Professor Kowalewsky has very properly made use of other people's work, and, where that was wanting, has gallantly and abundantly labored to fill the gaps himself. He has ransacked archives

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and libraries, and to complain that he has neither exhausted these resources nor filled all the gaps would be ungenerous. He wishes to give the sort of general view that was provided by Cibrario in his *Economica politica del medio evo* (1842), and, with certain reserves, it may be readily admitted that he has done so. Moreover, he has made accessible a good deal of difficult and curious learning and has furnished a great many fresh and interesting illustrations of points already well established. But all this is not accomplished by one man, even by one so vigorously cosmopolitan as Professor Kowalewsky has proved himself to be, except at the cost of a certain inaccuracy and superficiality. The reviewer has often had occasion to mention and illustrate these faults in noticing earlier volumes, and he does not now wish to recur to them in detail. It is enough to say that the present volume offers a rich harvest of slips, inaccuracies, signs of haste and carelessness; but at this time no useful end is to be served by reaping it.

The present volume, as the title indicates, is devoted to an account of the emancipation of the cultivating class, the breakdown of the agricultural system that had prevailed throughout the middle ages and the consequent changes in the structure of society. Our author's account of the disappearance of villeinage in England does not add very much to what is already known of the subject, as he is working chiefly from Ochenkowski's book, published in 1829, and his own work which appeared in Russian—alas for the Tower of Babel!—in 1880. He lays a good deal of stress on what he describes as the enormous change in English legal theory in the fifteenth century, citing a passage in *Doctor and Student* (page 29, edition of 1824) to the effect that the law regards every man's land as enclosed, even when there is no fence or hedge. This, he says, is contrary to all earlier legal theory and directly traverses the very frequent rights of common (common of shack) over the arable after the harvest. This point seems to be of less importance than he thought. In the first place, there is a passage in Britton II, xxvi, 4, cited in Gonner, *Common Land and Inclosure* (page 12, note) which seems to carry very much the same sense; and, in the second place, it is at least open to reasonable doubt whether such commons were not, in the last analysis, merely "a mutual disregard of trespass" (Gonner, *op. cit.*, page 46). Professor Kowalewsky then deals with the emancipation of the peasants and their separation from the soil, the rise of the yeoman class and the farm system, the growth of industry—promoted by the increased amount of available labor in the towns—and the eventual application of the capital so accumulated to the land. Then follows a long chapter

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dealing with the economic consequences of the suppression of the monasteries and the organization of the machinery for poor relief to meet the social changes which attended the economic revolution. From the early part of this chapter we could well have spared the analogies for secularization rather fantastically drawn from Frankish Gaul and sixteenth-century Russia. Our author contends that the clergy were not so badly treated as Roman Catholic writers have represented, and he finds the worst results of the suppression in the monopolization of the universities by the richer classes and the consequent lowering of the intellectual level of the country clergy. Then, in a chapter on "Turning Points in the History of Land-owning," he returns to the subject of the application of capital to the land and its entry into commerce, producing some happy illustrations rather than adding much to the knowledge of the subject.

Professor Kowalewsky then turns to Italy, where he illustrates various rights of common from the eleventh century into the sixteenth. The main causes which led to their disappearance were the same here as in other parts of Europe, but there were some local differences. For one thing, a middle class with some available capital and a desire to appropriate land appeared earlier here than elsewhere, and the pressure of competition with sheep-farming was absent. Then the existence, after the emancipation of the peasants, of permanent heritable leaseholds, the system of *Halbbauerntum*, caused an extensive survival of communism. The word survival here may seem to beg an important question, but it appears to represent the author's thought pretty accurately. Within quite recent centuries these communities show the transition from corporate to joint ownership. Under the influence of an increase of population and a desire on the part of original members to retain their advantages and indemnify themselves for expense occurred in draining and improvement or in meeting the demands of the central government, what were landowning communities become agrarian societies, the *biens communaux* become the *biens des communes*. Our author illustrates this point with a good deal of first-hand evidence, much of it drawn from Italian archives. It would be difficult indeed to point to any other general account of the system of the *patriziate* of Tessin (Ticcino) and the *participanze* of Emilia and Romagna, and this no doubt is a justification for an abundance of detail that might otherwise have been compressed to great advantage.

There follows an exposition of the influence of Italian economic theory in the eighteenth century upon agrarian policy. This tends to show that, although in the main the influence of the physiocrats pre-

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dominated, the older system found some defenders, and that legislative changes were inaugurated by the French and continued by the Austrians.

For the sake of completeness our author undertakes a résumé of the peasant emancipation in Germany. Of this it is perhaps enough to say that the subject may be studied to better advantage in almost any other quarter.

The volume concludes with a long chapter which is described as a survey of peasant emancipation in Russia but which is in fact a highly controversial political pamphlet. Our author begins, mildly enough, with a short account of the emancipation of the serfs in 1801, showing that Russia was the only European country in which unfree labor was abolished by government action and the emancipated persons were secured in the possession of their lands and commons. There follows an elaborate account of the recent agrarian legislation, by which agricultural communism was broken up and the land was allowed to pass into a limited—but, as Professor Kowalewsky thinks, insufficiently limited—form of private ownership. As a member of the Imperial Council, Professor Kowalewsky vigorously resisted this change, on grounds which are here fully set forth. He gives a spirited account of the debates, not neglecting his own share in them. But clearly this is neither the place nor the occasion to summarize and discuss them.

This whole extraordinary chapter discloses plainly what, considering the real worth and interest of Professor Kowalewsky's book, it would have been ungracious to say earlier. The work is really a vast pamphlet, intended to show that agrarian communism is primitive and universal and thereby to turn the arguments of those "revolutionary conservatives" who contended that since the Russian village communities were created by legislative act, they might be dissolved in the same way. As furnishing a criticism of the whole work and putting the reader on his guard, the chapter may claim a justification for its character which, on other grounds, would be withheld. It may be added that it makes very good reading and suggests a number of interesting points for discussion.

The subsequent volumes of Professor Kowalewsky's book will be awaited with some trepidation as well as with much interest. Meanwhile the hope may be expressed that the high standard of excellence set by the translator of the present volume will be maintained—and that the general index will not be forgotten.

GAILLARD LAPSLEY.

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The Union of South Africa. By W. B. WORSFOLD. Boston, Little, Brown and Company, 1913.—ix, 531 pp.

Intellectual and Political Currents in the Far East. By P. S. REINSCH. Boston and New York, Houghton Mifflin Company, 1911.—x, 396 pp.

Since the days of *Weltgeschichte*, when German historians and their emulators were wont to group all manner of events associated with mankind in divers regions of the earth for narration in many a ponderous tome, a new kind of universal or world history has arisen. Instead of an assortment of human happenings, more or less fortuitously brought together, an entity, complex in character and in function and myriad in manifestation yet organically and vitally joined in all its essential parts, is now presented for treatment. In the absence of a better name, the process by which it has come into being might be called "the expansion of Europe." It includes all that is suggested by the term "colonization," and vastly more besides. Broadly speaking, it may be said to consist of three great phases: the transplantation of European culture to non-European areas, whether colonies or not; the interaction of that civilization and its new environment *in situ*; and the reflex influence of such interaction upon Europe and upon nations of European origin. Though dealing, the one with a European colony and the other with an area in a measure Europeanized, both of the volumes under consideration illustrate certain aspects of this new type of world history.

The treatise on the Union of South Africa forms part of the so-called "All Red British Empire Series" which provides excellent historical and descriptive accounts, alike of the crown colonies and of the self-governing dominions of Great Britain. Though written by the former editor of the *Johannesburg Star*, it is singularly free from the easy judgments, sensational assertions and inaccurate information characteristic at times of journalistic productions. On the contrary, the author has based his statements chiefly on official documents, and the tone throughout is judicious and impartial. The result is a work both readable and authoritative.

By its title confined to the self-governing dominion proper, the actual scope of the book is somewhat broader. Dividing his material into five parts, Mr. Worsfold gives a preliminary account of the physical characteristics of the British possessions in South Africa as a whole, of the native races and of the history of the region from the time of

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the Phœnicians onward. This he follows by a description of the system of government, technically considered, of the situation in Rhodesia and adjacent territories, of the industrial and commercial development and of political, social and intellectual conditions in general.

Among the many interesting matters treated, the discussion of two fundamental problems, the relations of the Europeans with the natives and of the Franco-Dutch population with the British, calls for particular attention. The author points out (page 100) that one phase of the British policy has aimed at the preservation and civilization of the natives, so as ultimately to fit them for a "partnership in industry" with the Europeans. The other phase, while intending that in the determination of the relations of the Franco-Dutch with the British, or of both with the natives, British ideas shall prevail, has striven to respect the right of the early European people to "live their lives in all other respects undisturbed by any interference." The great obstacle blocking the realization of the policy, however, lay in the fact that it could not be applied singly to either of the two sources of conflict. Not only did the presence of the natives furnish a chronic state of contention between the two sets of Europeans, but by providing an abundant supply of cheap labor it checked the inflow of British immigration and consequently the measurable increase of British influence. Yet, great as were the difficulties and their eventual solution, the population of 26,720 Europeans, living in the Cape Colony in 1806, has grown to upwards of a million in South Africa at large, and its foreign commerce of £160,000 at the date mentioned has now reached a total of more than £75,000,000, an amount of trade *per capita* of European population greater than that of any of the oversea dominions.

Shifting the scene from South Africa to an area in which the environment of land and people is radically different, but in which the questions arising out of the expansion of Europe are far more complicated, and for that reason far more fascinating, Professor Reinsch affords a glimpse of the political and intellectual tendencies now prevalent in India, Japan and China. The opening sentences of the preface, indeed, suggest that he intended to trace the interaction of European and Asiatic upon their respective life and thought. Instead, he has chosen to dwell mainly upon certain of the processes that are Europeanizing the Far East and upon some of their most obvious results. In this respect, of course, the book is one of many on the subject which have been published in recent years.

Possibly the time for a work on the theme of what Asia has done

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for Europe since the "age of discovery" has not yet arrived; but something, even though tentative, is earnestly to be desired. Until a treatise of the sort is available, the "rise of Japan, the great Chinese transformation, the nationalist movement throughout the Orient" which "have made us more generally conscious of the fact that the separate existence of the East and the West has come to an end, and that, in profoundly influencing each other, they will both contribute their share in developing the all-human civilization of the future," must leave but a partial impress upon the occidental mind, since they have revealed to it only what Europe and the Europeans are doing to modify the institutions and culture of Asiatic lands. Much has been made of the West in the East, but lamentably little of the East in the West.

For one who apparently has not observed in person any of the phenomena with which he deals, Professor Reinsch has been distinctly successful in portraying the Asiatic environment in which the leaven of European ideas and practices is working, notably in China and Japan. The materials used have been drawn from "the Oriental periodical press and contemporary literature," published, presumably, in English, and from translations and other writings of correspondents, though obtained in such a form as to preclude direct reference to them in any foot-notes or bibliography. The work is partially descriptive in form and philosophic, if not a bit didactic, in spirit. It appeals particularly to the thoughtful-minded who have already done considerable reading about conditions in the Far East, but who may wish for a general survey of the whole matter in small compass.

Beginning with a study of "Asiatic unity," the author endeavors to prove that such an aphorism as "the East is the East" suggests a notion of inherent separateness from the rest of mankind which is altogether erroneous. Founded on a set of illusions, which rest in turn on ignorance and its co-partner prejudice, it obscures the truth that, amid the intricate diversities of social phenomena in the Orient, there exists an essential unity proclaiming the kinship, mental and moral, of the Asian with his fellow beings the world over. Then follows a close examination of "energism in the Orient," as displayed particularly in a growing consciousness of nationality and an awakening desire for popular self-expression as against the dominance of class, caste or rigid custom. In the remaining chapters the mode of treatment is more concrete. It deals with the phases of intellectual development and expression, literary, educational and journalistic, in India, China and Japan, and with the profound changes that are now affecting the polit-

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ical fabric in the two countries last named. Permeated with a broad sympathy for the cause of universal peace, the book might well be made to do yeoman service in aiding to dispel at least some manifestations of the repulsion of race which has been one of the most unfortunate consequences of European expansion.

W. R. SHEPHERD.

The Framework of Home Rule. By ERSKINE CHILDERS. New York, Longmans, Green and Company, n. d.—xvii, 354 pp.

Mr. Erskine Childers's *Framework of Home Rule* is a powerful plea for the fullest measure of self-government for Ireland. The volume is divided into two parts, of which the first presents historical analogies between Ireland and the United States, Canada, Australia and South Africa, while the second contains a careful study of the present condition of Ireland, in regard to government and finance, and an analysis of the problems which must be solved in any successful scheme of home rule.

The parallel drawn by Mr. Childers between Canada and Ireland is close and striking. He shows how economic stagnation, discontent, unrest and finally open rebellion resulted from the denial of self-government to the North American colonies. He tells somewhat fully the story of the troubles that led to the sending-out of the Durham mission in 1838. He points out that the one result that the British Parliament tried most strenuously to bring about by the Canada Act of 1839—the counteracting of French influence by the British colonists, the balancing of a supposedly disloyal population by people who might be expected to be more loyal to the British crown—was not secured; and that what brought liberty and self-government to Canada was the establishment by Lord Elgin of the principle of the responsibility of the Canadian executive to the elected chamber of the Canadian legislature—a concession apparently not contemplated in the Act of Union. But Canada was far away, and colonial self-government was established at a time when the dominant feeling in England concerning the colonies was expressed in Disraeli's remark (in a letter of 1852 to Lord Malmesbury, which Mr. Childers quotes) that "these wretched colonies will all be independent, too, in a few years, and are a millstone round our necks." Unfortunately Ireland was too close to England, and too many Irish landlords and clergy were resident in England to give Ireland an opportunity, through any similar indifference and neglect, to work out her own salvation.

The parallel with South Africa, although not so close as regards the

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effect of long-distance government of unrepresented white communities, is striking because of the dramatic change from a country in open and armed resistance to a loyal self-governing colony, choosing for its premier one of the men who had commanded its forces against the British.

Mr. Childers founds his plea for Ireland on a thoroughly democratic belief in the inherent goodness of a nation and in the tendency of self-governing communities to prove themselves worthy of the confidence placed in them. He objects to restrictions or limitations, which are the outcome of suspicion and distrust, as calculated to bring about the evils which they are designed to check. He also objects to any petting or spoiling of Ireland, even as a kind of reparation for the harm and evil done to her by England's long misgovernment. He would like to see her in entire control of her own fiscal system, free to levy her own taxation—even to set up duties against Great Britian if she deems these of advantage to her—and obliged to pay her own way out of her own resources. In this respect the Asquith Home Rule Bill, as it was passed in the session of 1912–13, comes nearer to Mr. Childers's ideal than did either of Mr. Gladstone's bills. It is true that Ireland is restrained from instituting protective duties either against Great Britain or against the world at large; it is true also that she is to receive for a time a subsidy to help her to meet expenditures incurred by a government which her people had not established and could not control. But customs and excise duties, which were reserved to the imperial Parliament by the bills of 1886 and 1893, are to be under the full control of the Irish government, and there will be practically little restriction on Irish freedom to arrange a fiscal system suited to Irish needs.

On one point Mr. Childers must be disappointed in the Asquith Home Rule Bill. He would prefer that Irish representation at Westminster should entirely cease. If Irish affairs are to be entirely under the control of the Irish Parliament, there is, he argues, no more reason for Irish members at Westminster than for Canadians or Australians. The British Parliament is not the federal legislature of the empire; but it is the Parliament which deals with matters most intimately affecting England, Scotland and Ireland. Remove the Irish interests to Dublin, and why should Irish members be left to vote on English and Scotch affairs? This argument against the retention of the Irish members is unanswerable. Even if the imperial Parliament were to take up matters concerning Ireland, the Irish members would be too few to affect the course of legislation; and yet their presence would seem to justify

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interference with Irish affairs from Westminster. On the other hand, in dealing with matters of concern solely to England and Scotland, they would be responsible to no constituency and would be amenable to the kind of pressure that can always be brought to bear on irresponsible legislators.

Of the many volumes that have been written of late on the Irish question, there is none more serviceable than this to the student who is anxious to understand the problems of Irish finance and Irish government as they present themselves at the present time. The tabulated comparison between the bills of 1886 and 1893 at the end of the volume is a most useful feature. What might easily be a dry political discussion is vivified by Mr. Childers's moral earnestness into a masterly plea for democracy and self-government.

A. G. PORRITT.

HARTFORD, CONN.

Elements of Socialism. By JOHN SPARGO and G. L. ARNER. New York, The Macmillan Company, 1912.—iv, 382 pp.

This is an excellently planned and well prepared text book on Socialism by two authors, of whom one has long been favorably known as a Marxian student and publicist, while the other, although not heretofore prominently identified with the socialist movement, brings to his task some years of practical experience as a teacher of economics. The joint product of such writers could hardly fail to exhibit the high qualities of directness in presentation, fairness in exposition and criticism, broad-minded candor and good-humored tolerance.

The varied character of socialism is recognized by the authors in the division of their book into parts which deal in order with socialism as a criticism, as a theory, as an ideal and, finally, as a practical movement.

Socialism as a criticism of modern capitalistic society is by this time so familiar to those interested in social questions that there is no necessity for reviewing at length what is adduced under this head. For the most part this criticism will receive general approval, excepting in so far as it grows out of the implied assumption that the ideal of socialism is the ultimate and the desirable social ideal.

In Part II, which discusses socialism as a theory, we have a sympathetic exposition of Marx's economic interpretation of history, of the class-struggle theory and of the theory of surplus value. These theories are of course familiar to all students of socialism, and Mr. Spargo's great admiration for Marx is so generally known that it is needless to say that the "Revisionists" and their criticism of Marx receive but

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scant consideration in the volume under review. The authors make a brave attempt to rehabilitate the labor theory of value and its corollary, the theory of surplus value; but these theories have been so completely discredited since the days of the classical economists from whom Marx himself got his value theory that it is unnecessary to do more than express mild surprise that so much effort should be expended in a futile attempt to reëstablish them. There is all the more reason for such surprise when it is observed that the authors themselves expressly recognize that the Marxian philosophy is not a *sine qua non* of the practical socialist movement. Thus they say (page 155):

> Even if his [Marx's] entire system of philosophy could be destroyed, the inequalities existing, the striking social contrast of extreme wealth and extreme poverty co-existent, the undeniable fact that useful labor often brings only a life of hardship while luxury and ease are often the portion of those who do no labor at all, would undoubtedly afford a basis for a movement aiming at the collective ownership of the means of production.

Well and good! Why not proceed frankly on that basis? Is it perhaps because the theory of surplus value is such an effective weapon in practical propaganda that it is too much to expect the socialists to surrender it?

In Part III, which deals with socialism as an ideal, there are chapters on the utopian ideal, the ideals of modern socialism, the political and economic socialist state and on socialism and the family. Here we find stress laid upon the ideals of international solidarity, of universal peace and of equality of opportunity. The socialist state, it is contended, must be strong yet democratic; while coercion in some degree would always be necessary, the authors believe that in a state where the "principal" means of production are truly socialized, the need for coercion would be reduced to a minimum. In its economic organization the socialist state is described as one in which not necessarily all but only the principal means of production are socialized. Indeed, in some lines, competition between the individual and the state is to be cheerfully encouraged if that competition does not involve exploitation of others (page 228). Coöperative effort by individuals acting independently of the state is also to be welcomed (page 230). As to the remuneration for labor the authors deny that socialism necessarily implies equality of income. They also deny the possibility of remunerating labor according to its contribution to the value of the product. Their belief is that the socialist state will take the wages system as it is and modify it to suit its own needs. "The ideal to be aimed at is

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approximate equality of income, but in the meantime to make the standard of income as high as possible, letting the actual amount be determined by the free operation of the law of supply and demand" (page 235). This seems to involve the curious assumption that "the law of supply and demand" is something apart from the whole scheme of competitive valuation, and that it can be carried over from a competitive into a coöperative commonwealth as a regulator of income. It seems also to involve the assumption that the demand for and the supply of labor are definite and fixed and that either can be momentarily calculated. Both of these assumptions are of course utterly unwarranted and the socialist state would have to cast about for other means of fixing wages than the "law of supply and demand."

The subject of credit under the socialist state is dismissed with a short paragraph. According to the authors, credit will, of course, be "socialized,"—whatever that may mean. The extent to which the authors grasp the significance of credit in modern life is sufficiently indicated in the following quotation: "Credit has always been a means of oppression, as well as the basis for the gambling which goes on upon the produce and stock exchanges" (page 237). Under "Land and Rent" the authors concede that the socialistic state would not interfere with the private use of land but they assert that it would have to adopt Henry George's scheme of taxing "the socially created value of land to the full." Under "Socialism and the Family" we find the familiar charge that it is capitalism which is really disrupting the family and that there is every reason to suppose that in the socialistic state the highest form of the monogamous family will develop.

In Part IV, in which socialism as a practical movement is discussed, we find a historical survey and a consideration of present-day socialist policy. Here it is interesting to note that the authors quietly surrender the doctrine of "increasing misery," which played so heavy a part in Marx's prognostications. This is doubtless because the doctrine has been increasingly refuted by the inexorable logic of fact and experience, and because intelligent socialist leaders everywhere have abandoned it. Our authors ally themselves frankly with the opportunists and so advocate getting as much of the socialist program as possible. This reform program, which is set forth at length, is so familiar that it needs no special mention here. The authors believe that ultimate socialization, which is of course the end to be achieved, will be brought about through the compensation of the expropriated. Should this not prove sufficiently satisfactory to the proletariat there remains the convenient and effective weapon of taxation to destroy the last vestiges of privileged possessions.

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In the last chapter entitled "Some Objections to Socialism Considered" Messrs. Spargo and Arner score heavily in refuting some of the shallow objections to socialism that one encounters in popular discussions. Some of these objections like "graft" *etc.* are easily shown to revert like a boomerang to demolish those who hurl them. Others of vital importance, such as the danger of bureaucracy, the lack of incentive to the saving of capital, the administrative difficulties under socialism, the necessity of a transformation of the human viewpoint *etc.*, cannot, of course, be so conclusively dismissed. In the absence of positive objective criteria the arguments bearing on these matters represent on both sides little more than individual opinion or, perhaps, individual prejudices. Messrs. Spargo and Arner may believe, if they can, that whatever transformations of human nature are necessary to the successful establishment of a coöperative commonwealth will be effected easily and naturally. Less enthusiastic reformers may with equal propriety and authority believe otherwise. These fundamental points are beyond agreement or conclusive demonstration—a fact which keeps green the interest in life and at the same time adds greatly to its joy.

On the whole the book leaves a decidedly favorable impression. The style is clear and direct. The attitude of the authors throughout is one of calm reasonableness. Perfervid emotional appeals, bitter criticisms *etc.* are conspicuous by their complete absence. The serviceableness of the text is enhanced by summaries and question lists at the end of each chapter.

E. E. AGGER.

Citizens Made and Remade. By WILLIAM R. GEORGE and L. B. STOWE. Boston, Houghton, Mifflin Company, 1912.—265 pp.

If anyone should announce to-day an intention to advance upon the gangs of New York City, conquering them one by one and transforming them from law-defying into law-abiding groups, most people would put him down as a hopeless visionary. Yet that is precisely the plan which William R. George, alias "daddy," and the founder of the first George Junior Republic, deliberately formed back in the early nineties. He carried it far enough to believe in its feasibility and, although subsequent events drew him to other work, the beginning he made was suggestive and romantic.

There is romance also in the story of how this sculptor in boy nature, starting life with a "conventional assortment of stock conceptions regarding society and social relations," gradually changed from a strong

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admirer of militarism to a firm believer in self-government for adolescent boys and girls. In his first experiment with a summer camp for those rejected of others he frankly held to that dogma of discipline: "Spare the rod and spoil the child." Had anyone else developed the Junior Republic idea at that time, says Mr. Stowe, Mr. George would have scouted it as sentimentalism. But the farce of trying to make strong, right-acting men and women out of young city savages by giving them things which merely fed their desire for more, soon weighed heavily on his soul. So he began to make them work for clothes and "extras." The first earned hat smashed by companions became an argument for laws protecting property. It was only another step to a court of justice which should punish those who broke the laws. Then, because his own sentences had little deterrent effect, Mr. George let the boys and girls conduct the trials and pass judgment. Painful experiences accompanied this birth of a new social order, until it finally matured in the present complex self-government of the George Junior Republic. These experiences are here told with a felicity of selection which makes the evolution of Mr. George's plans and the modification of his own "stock conceptions" an absorbing study in how new things are really wrought out.

Of the joint authorship of the book the preface explains that almost every word was written by Mr. Stowe, while Mr. George for the most part provided the data and the ideas. As secretary of the School Citizens' Committee Mr. Stowe became interested in the self-government movement, and as secretary of the National Association of Junior Republics he became familiar with the specific history here written. Yet it is not as history that this book is regarded by its authors, but as an "interpretation of the real meaning and significance of all such training" as that embodied in the various self-government plans that have sprung up in school and reformatory. The history of the George Junior Republic has already been written by Mr. George. Perhaps it is not generally known that the National Association of Junior Republics, of which Mr. George is national director, proposes to establish at least one junior republic in every state in the union, and that a similar community has already been established in England.

The authors have not contented themselves, however, with history and interpretation. They are propagandists. They would carry their principles of reformation into penal institutions for adults. Nor are they concerned with institutions only. Believing thoroughly that character is formed through work and responsibility, they would supply work and responsibility to all during the character-forming period of

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life. There is a strong flavor of the primitive in boy nature as these authors see it. While one may sometimes think that their generalizations are a bit sweeping, he can seldom dissent from their main conclusions. Self-government they believe to be one of the highest forms of responsibility. They would therefore carry it into "all schools and all agencies for the training of children," and into "all institutions for the training of misfit adults." He who calls American democracy a failure should keep silence, they believe, until such training for democratic citizenship as this has been provided for American youth. When it has been provided they believe that a new citizenship will be raised up such as the world has never seen.

WINTHROP D. LANE.

NEW YORK CITY.

Seasonal Trades. By Various Writers, with an Introduction by SIDNEY WEBB. Edited by SIDNEY WEBB, and ARNOLD FREEMAN. London, Constable & Co. Ltd., 1912.—xi, 410 pp.

This collection of papers is the outcome of Mr. Sidney Webb's Seminar at the London School of Economics and Political Science during the season of 1910. In his preface Mr. Webb explains at the outset what the reader may expect and points out the merits and the shortcomings of the volume. These chapters of students' work, he says, "inevitably fall short of the highest standards of scientific investigation or economic scholarship." But they are the result of patient research, they add information to our current knowledge of various trades, and "taken together they serve to bring home to us some of the realities of economic pressure that lie beneath and behind all our abstractions about the capacity of 'the labour market' for an indefinite 'absorption' of the temporarily unemployed."

This is indeed one of the strongest impressions made by the volume and the course of study which it embodies: its portrayal of actual conditions in setting forth the practical interplay of trades and processes of which our complex industrialism is composed. These studies do not undertake to discover the remedy for seasonal unemployment or to say by what steps the seasonal trades may be regularized and their unskilled labor may be "dovetailed." They seek to give the "structure and economic characteristics" of various industries, with special reference to continuity or irregularity of employment.

The problems of seasonal unemployment are practically the same as those of general unemployment, "recognized as the predominant social question of the day." "The tendency of each trade is to keep at-

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tached to itself in employment, underemployment or unemployment a sufficient number of hands to meet all possible demands upon the trade." The sum of all these "pools of labour" forms the "reserve army," which Marx characterized "a great convenience for the employer who can draw upon it at need and feels no responsibility for its maintenance while on reserve."

Seasonal fluctuation, ignored by most economists up to very recent times, is found common to practically all trades. It is due to such simple causes as weather and climate, or to more subtle social and economic influences, such as fashion, supply of raw material and the like in a thousand variations. Dundee Harbour, for instance, unlike other ports, is busiest in the winter season because Dundee is the center of the jute industry, and raw jute is imported direct from India and arrives between September and April, requiring extra labor for the discharge of cargoes.

Eight trades are discussed in the book: tailoring, the occupation of the waiter, the cycle industry, gas-making, London millinery, skin and fur trades, boot and shoe making and the building trade. As might be expected the chapters are unequal in merit. Some of them, such as the paper on tailoring, suffer from excessive detail. The study of the cycle industry is one of the most interesting, showing the efforts made to regularize seasons by combining in the same factories the several trades of the manufacture of typewriters, sewing machines, bicycles, motor cycles and automobiles. The concentration of allied trades in the same district was found a further aid to continuous employment. Cycle workers in the Midland centers, Birmingham, Coventry, Redditch *etc.*, may when "suspended" find employment as general mechanics, or as braziers, polishers or platers in other Midland industries. Government and public-service contracts also help to fill the slack periods. Thus one large firm regularly executes in the summer, when the home market is falling off, large orders for machines for the General Post Office. On the other hand, the failure of the War Office to place its orders so that they may be filled in a period of slack work is deplored in the chapter on boot and shoe making.

The studies present surprisingly little information from the students' personal investigations of actual conditions. The sources are for the most part statistical and general. If any sustained effort was made to check up these data by regular fieldwork it is not recorded. The references to the writers' personal inquiries are vague and amateurish. "Among the many millinery workers with whom I have come in con-

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tact", "all the millinery hands I have met" *etc.*—such are the only references to fieldwork in the entertainingly written chapter on millinery. The study of boot and shoe making has a carefully compiled bibliography of thirteen pages, equal in length to the chapter itself. The only reference to fieldwork is a footnote, stating that the material embodied in the "following paragraphs" has been gained from visits to factories and to homes of workers, conversations with proprietors *etc.* No figures or exact records are given.

The same vagueness of testimony is true of almost every chapter. The book owes its vital quality not to the records of personal observation but to its well-directed study of other and more indirect sources.

JOSEPHINE GOLDMARK.

NEW YORK CITY.

The Science of Human Behavior, Biological and Psychological Foundations. By MAURICE PARMELEE. New York, The Macmillan Company, 1913.—xviii, 443 pp.

To cover the distance between the physical and chemical characteristics of matter and the complications of society in four hundred odd pages is an undertaking. Mr. Parmelee of course has the advantage of the evolutionary path, which he has paralleled in an aeroplane, as it were, and has endeavored to examine impartially with no little ability and with complete seriousness. The work, as the subtitle implies and the preface states, "is the first of a series in which" the author proposes "to deal with the evolution of human culture and of human nature. . . ." (page ix). It is merely the basis upon which the author's own house is to be built. Hence it would not be fair to demand intense moments and exciting passages, for solidity is a necessity in a foundation. The success with which Mr. Parmelee has carefully avoided the appearance of entering into the controversies and of yielding to the temptations which beset the trail from mere matter to human society may be considered a feat in itself. The conclusion that one side or the other in a controversy is right, however, is a necessity at many points. Mr. Parmelee chooses his conclusion unobtrusively. He does so with the success with which Herbert Spencer could be trusted to do the opposite, were that most stimulating man to undertake the passage again today.

"The volume . . . has involved bringing together, so far as possible within one book, the pertinent data from the three sciences of biology, psychology, and sociology" (page 7) "Chapters II to IV summarize most of the fundamental facts and principles of modern biology. Chapters V to VII describe briefly the behavior of the lower

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animals [Organisms]. Chapters VIII to X give some of the most important facts and principles of neurology. Chapters XI to XVI cover the whole field of psychology in a concise fashion. . . . Chapters XVII to XX state the most important facts with regard to the beginning of social evolution. . .'' (pages viii-ix.).

The book will undoubtedly meet with the fervent disapproval of many experts in the fields from which Mr. Parmelee has topped the choicest grain. None the less it brings together the data in a small compass, and discusses their more obvious bearing on social evolution. The method is interesting. Mr. Parmelee insists that phenomena requiring extra-phenomenal explanations are extra-phenomenal, or else capable of scientific explanation, in which case they belong once more to the category of phenomena (e. g. pages 287–288). He attempts the scientific explanation, by arranging and discussing the work of actual investigators of (and authorities on) phenomena. That he prefers to stand rather with H. S. Jennings and Jacques Loeb than with Titchener, Bergson and others is apparently due to the fact that the theories of Jennings and Loeb seem to him capable of considerable experimental verification.

In but one part of the book is there a lapse from ample clarity. The chapters devoted to neurology are so bestrewn with terms far beyond the lay mind that they are confusing and not helpful.

The bibliography is a monument to recent progress. Two hundred and thirty-seven titles are quoted, of which ninety per cent have appeared since 1890.

F. A. Dewey.

Columbia University.

Republican France, her Presidents, Statesmen, Policy, Vicissitudes and Social Life. By Ernest Alfred Vizetelly. Boston, Small, Maynard & Company. No date.—x, 511 pp.

This is a fascinating book; less a history than a gallery of portraits, a narrative of historical incidents, lacking in perspective yet crowded with data, revealing an intimate knowledge of men and things but more like a work of reference than a record of personal experiences. The fascination lies in the material rather than in the way in which it is presented, and yet, the very commonplaceness of its reflections are so in tone with its easy journalistic manner that, accepting it for what it is, one is forced to admit a sort of charm in the narrative as well. Graphic touches in personal description lighten up a sort of encyclopædic treatment of biography; and many a hint of personal eccen-

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tricity or obscure trend of public opinion makes the historical treatment both valuable and interesting. There might, apparently, have been much more of this incidental material had the author chosen to give it, for as the correspondent of the *London Illustrated News* and the *Pall Mall Gazette* in Paris, he had ample opportunity to penetrate into corners where one may gather that kind of information which gives the charm to the indiscretions of memoirs of the senescent. But our author is anything but indiscreet. He seldom intrudes himself upon the reader, and then only in the plural "we." He was apparently present at many famous incidents, saw both Thiers and Gambetta in their homes and had the *entrée* to salons where politics was largely "fixed" in the days of intrigue under MacMahon; yet only a faint reflection is given of these intimacies.

The special value of the volume lies in the light it throws upon the complexion of the successive ministries through the history of the republic. There is little here of original contribution; but only those who have had the opportunity to study France at first hand and have the time to trace through journalistic sources the varying attitudes of parliamentary groups as well as of their leaders, can really understand the internal history of the republic. Mr. Vizetelly has drawn together much of this information, and presented the material with an impartiality which one could not expect from a similar survey written by a Frenchman. His standpoint is in general that of a fairly conservative republican. He has little understanding of the social problems which are fronting France to-day and not much interest in them. But when ideas incorporate themselves in men and the men begin to act, the deeds are recorded by our chronicler. Altogether, one is thankful that he has not intruded more philosophy and has told his story in journalistic fashion, with its rambling, newsy, irrelevant items strewn along it. Any other treatment by him would have been a failure, and this is a success.

J. T. SHOTWELL.

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BOOK NOTES

Studies of government by the so-called comparative method usually furnish a picture so blurred in its outlines as to be of slight service to one who seeks to know the organization and the operation of any single institution. Accurate inspection and comprehension of particulars is sacrificed for the supposedly broad view of general aspects and tendencies. The isolation for the purpose of analysis and comparison of what may seem separate and distinct features of the various governments considered is misleading and unsatisfactory where the elements thus abstracted are in practical operation invariably interdependent. The dangers of this method are largely avoided by Dr. Delos F. Wilcox in his volume on *Great Cities in America* (New York, The Macmillan Company, 1910; xi, 426 pp.) through the special and separate treatment accorded to the problems and the government of the cities of Washington, New York, Chicago, Philadelphia, St. Louis and Boston. The history of each city is briefly outlined, its relation to the state government is presented and the organization, composition and inter-relations of its various departments are set forth. Consideration is given to the finances and to the various activities, public and semi-public, in which each city engages. The balance in the relative attention devoted to structure and to function deserves commendation, with the possible exception of that in the chapter on St. Louis. The introductory and concluding chapters deal in a more general way with the problems of great cities, but the discussion of these topics does not enhance the value or the merit of the book.

Professor W. B. Munro, who provided students with a standard textbook on the government of European cities three or four years ago, has now brought out a companion volume on *The Government of American Cities* (New York, The Macmillan Company, 1912; ix, 401 pp.). "In an age," he says, "when men appear far too ready to proceed with a diagnosis and to prescribe remedies without much preliminary study of the anatomy and the physiology of city government, too much stress upon the latter branches of the subject can scarcely be laid." That his attention, in this case, is confined to the structural aspect of government by no means implies a failure to realize the importance of the functional aspect; this has been postponed for later treatment. Believing that the roots of the present lie deep in the past and that only through a knowledge of our institutional history can the present

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organization and its probable line of development be understood, the author begins with a sketch of municipal evolution. Subsequent chapters explain the powers and duties of the city as a municipal corporation, describe the organs of government and their relations with one another, and in the light of most recent changes discuss parties and politics, nominations and elections, direct legislation and the recall. With so wide a field to cover it has been necessary to indicate the sources of further information; and unfortunately the bibliographies at the end of each chapter have been put together somewhat carelessly. Even in the text misstatements occur, as for instance where Pittsburgh is included among the cities having a bicameral council. But minor defects should not be allowed to obscure the great merits of the book: an admirable sense of proportion, a detachment of view and fairness in considering controversial questions, an independence of judgment and originality which are rarely found in such systematic studies. Professor Munro often shows the influence of his Canadian origin and of his familiarity with conditions in Europe. Thus, having in mind the nominating systems which prevail in other countries, he refuses to accept the direct primary as a final solution. "It is based upon the assumption that the voters will act wisely without leadership, rather than upon the principle that they will follow wise leadership." If the reformers "assumed the inevitableness of leadership and strove to make it responsible, the results would undoubtedly be better." A simpler device is needed. The reason why so many candidates come forward for a place on the ballot is that it is so hard to get on the ballot; nominations, being difficult to obtain, are sought for their own sake as an honor. Due recognition is given to the real significance of the commission-government idea. The advocates of that plan "were the first group of municipal reformers to bring forth a proposal to abolish the traditional separation of legislative and administrative powers, and consequently the first to urge a complete reorganization, on a simplified basis, of the whole municipal framework." Professor Munro dates the renaissance of our city government from the events which followed the Galveston flood a dozen years ago.

In his *European Cities at Work* (New York, Charles Scribner's Sons, 1913; xiv, 370 pp.) Dr. Frederick C. Howe is not concerned with the machinery of government, but with those functions of government which contribute most to community living. Having written of British cities in an earlier volume, he now devotes only five of twenty-one chapters to them; and this may be also due to the fact that, aside from the striking success of municipal ownership and the development

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of garden suburbs, there is not a great deal of inspiration to be gathered in England by our struggling reformers. Municipal ownership, of course, has amply justified itself, both in the improved service given to the public and in the profits which go to the reduction of taxes. Street railways carry passengers at an average fare of about two cents, provide everyone with a seat even in rush hours, pay taxes and yet make a profit. The city of Bradford maintains an express and delivery service which is a great boon to tradesmen and shoppers; the charges vary from four cents for seven pounds to ten cents for 56 pounds. But it is the German cities which Dr. Howe regards as "an experiment station for all of us." Nowhere else does the civic ideal contrast more strikingly with our own. In America, to put the facts baldly, the city is given up to exploitation; it is made ugly and unhealthy by obtrusive industrialism; it is everywhere shackled with limitations to subserve property interests. Our failure in the city—that "singular relapse into barbarism," as Wells says of Chicago—cannot be attributed to rapidity of growth; Dr. Howe shows that German cities have emerged as recently and grown as fast. The explanation lies in the psychology of the people, he says. In one case the end held in view is private right, in the other public service. "It is the bigness of vision, boldness of execution, and far-sighted outlook on the future that are so amazing. . . . Germany almost alone among the civilized nations sees the city as the permanent centre of the civilization of the future, and Germany almost alone is building her cities to make them contribute to the happiness, health, and well-being of the people." How that is being done Dr. Howe tells better than it has anywhere been told before. He writes with an authority which comes of practical experience with city affairs in this country and of a familiarity with European cities gained by many visits—one of them as an agent of the United States government. He writes also with a brightness and freedom which will make a wide appeal. A general description is given of two communities, Frankfort and Düsseldorff, of which the latter, though governed by business men, has carried municipal socialism farther than the most radical suggestions proposed in this country. Each of the other chapters treats of some one line of municipal activity—such as city planning or protection of the workers—and draws illustrations from various parts of the country. The tone, it must be said, maintains a monotonous level of enthusiasm throughout. The least successful part of the book is that in which an attempt is made to explain the German city and its elements of superiority over our own. It is absurd to suppose that "home rule" bred

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the civic spirit which prevails in Germany. Our states have home rule.

Mr. Maurice B. Dean in *Municipal Bonds Held Void* (Published by the Author, 20 Broad Street, New York City, 1911; 122 pp.) enumerates alphabetically by states and by cities all issues of municipal bonds in the United States which have been declared void by the courts. The preface and the accompanying tables present an interesting classification of the decisions and their practical results. Of the 510 decisions in which bonds have been declared invalid, 205 resulted from judicial proceedings preliminary to the issue of the bonds questioned, so that no loss accrued to investors. In 305 decisions, however, bonds have been held void after issuance and delivery. In 56 of these cases the amount in issue does not appear, but the remaining 249 cases involved bonds to the extent of $171,646,600. The aggregate is undoubtedly larger than this, because in a number of decisions all that appears is the amount for which suit was brought, and the total issue of which the bonds in suit formed a part is not given. But such tables as the author gives possibly tend to exaggerate the loss to investors and the consequent profit to municipalities from their own carelessness or illegal action, owing to the legal doctrine which in many instances permits holders of void bonds to follow the proceeds in order to prevent unjust enrichment on the part of the borrower. There are a number of instances, also, where cities have paid bonds or a certain fraction thereof, even after a judicial declaration of invalidity. That the courts are not wholly successful in their general efforts to protect purchasers who buy before maturity and without notice of the facts which produce invalidity appears from the information that in 153 cases such bona-fide purchasers were the losers to the extent of nearly $7,000,000. And though the courts endeavor zealously to apply the doctrine of estoppel by recitals for the protection of lenders, such recitals have furnished an insufficient protection to the investor in 45 cases, causing a loss of about $1,800,000. The author suggests that reliance was doubtless placed by the creditor on the rule of good faith and that of estoppel in many of the other decisions in which it was not passed upon by the courts. The author's exposition emphasizes the pressing need of some more effective way to protect investors and to maintain the marketability of municipal securities and yet to confine the borrowing of municipalities within the limits set by statute. The expedient of providing by statute that registration of bonds with state officials shall cure all defects has been tried but has not been found entirely effective, for in 8 cases bonds so registered

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have still been declared invalid with a resulting loss of $364,000. The author's tables indicate also the causes of invalidity and the purposes for which the various bonds were issued. It appears that in 19 states no issues of municipal bonds have been held invalid. The record as a whole is far from creditable. It would appear much worse if it included all the issues of state bonds which have been repudiated. The holders of state bonds are denied even the consolation of prosecuting an unsuccessful suit in the courts, owing to the doctrine of the nonsuability of the sovereign and the unrighteous advantage accorded to the states by the eleventh amendment to the federal constitution. On the whole, the courts and in particular the federal courts have been generous towards the investor in balancing his interests against the importance of maintaining effectively the constitutional and statutory limitations on the debt-incurring propensities of municipalities. But our existing machinery for preventing the cities from transgressing the bounds prescribed is sadly defective. The expense of the minute and exhaustive examination of records by attorneys for the houses which market municipal securities necessarily reduces the price which such securities will bring. And all too often, even after the greatest precautions, the borrower enjoys the proceeds and never repays.

No branch of the law enjoys more rapid development than that which deals with commerce between the states. The insistence of interstate carriers that state legislation purporting to be passed merely in exercise of the police power or of the power to tax imposes invalid restrictions upon the freedom of interstate commerce brings before the courts an increasingly large amount of litigation. The activities of Congress and of the Interstate Commerce Commission impose heavy burdens on the courts in the interpretation and application of statutes and administrative orders. It is no small task to decide the constantly arising questions of fact as to whether any specific act of commerce is inter-state or intra-state. Mr. Frederick N. Judson has therefore met a pressing need in bringing out a second edition of his excellent work on *The Law of Interstate Commerce and its Federal Regulation* (Chicago, T. H. Flood & Co., 1912; xxiv, 805 pp.). Since the appearance of his first edition in 1905, Congress has passed the Employers Liability Act of 1906 and its later amendments, the Live Stock Transportation Law of 1906, the Hours of Service Act of 1907, the Commerce Court Act of 1910, and by a number of amendments to the Interstate Commerce Act, notably the Hepburn Act of 1906 and the Mann-Elkins Act of 1910, has greatly increased the powers and duties of the Interstate Commerce Commission and thereby provoked a

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corresponding increase in the litigation before the courts. Most of the increment of 300 pages in the second edition deals with questions which have arisen by reason of this additional legislation, although there is a substantial expansion of the treatment of what constitutes interstate commerce, the extent of state power to regulate commerce, federal control over state regulation, and combinations of business and of labor in interstate commerce as they are affected by the Anti-trust Act. The important statutes are set forth in full in the appropriate chapters in the text. In the appendices are found some of the statutes of minor importance, the rules of practice before the Commerce Court and before the Interstate Commerce Commission and the forms of procedure promulgated by the latter body. Those who would avoid the pain of reading the decisions for themselves may object that much of the author's exposition is too succinct and compressed, but in so many instances the reasoning of the courts is relatively so unimportant as compared with their decrees, that the method of accurate and pithy statement of the law as it has been laid down seems worthy of high commendation. Even now the book is out of date. But those who would keep abreast of the law of interstate commerce must religiously read the judicial opinions in the advance sheets.

Mr. Lippmann's book *A Preface to Politics* (New York, Mitchell Kennerly, 1913; 318 pp.) defies analysis and characterization. It is not a thesis but a running commentary on things in general and politics occasionally, full of shrewd suggestiveness and clever phrases. Probably nobody but the advocates of the mass-strike will be pleased with it, and they will be chagrined to find their philosophy based on a myth. That we have not made the best of our opportunities, that most of our statesmanship is blundering incompetence, that Mr. Bryan's mind is not very flexible, that the socialist's idea of making capitalism the scapegoat for all the ills of the flesh is folly, that the white slave problem will not be solved within the limits of a nonconformist's conscience, most thoughtful people have already discovered; but they will be glad to have it rediscovered with such generous and pleasing enthusiasm. Mr. Taft, whom Mr. Lippmann will not credit with much lightness of mind, found out in 1912 that the initiative and referendum would not pay a man's rent; and college professors whom Mr. Lippmann put in the eolithic epoch of thought have all been worried about the very same problems which he raises. A little more acquaintance with them and their writings would have shown him that they have as little liking as he for the systematic Philistine. Nevertheless, everyone will find profit in the author's reflections on the shortcomings of political

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reforms, the reasons for the vacuity of party platforms, the place of third parties in our system, socialism and the farmer, the representation of interests, and political machinery and political aptitudes.

We have had books on the "true," the "new," and the "direct" democracy, but it has remained for three members of the Rota Club to attempt the "real" thing. In a word, Mann, Sievers and Cox's *The Real Democracy* (London, Longmans, Green and Co., 1913; xi, 276 pp.) is an attack on capitalism by three men who fear that socialism will deepen the servility of Mr. Belloc's servile state. Capitalism is, in their opinion, a crude, blundering system, based largely upon exploitation, inheritance and privileges, which have produced no democracy at all, but an amplitudinous plutocracy. There can be a real democracy only when a majority possess property in severalty, and with President Woodrow Wilson they believe that the plutocrats must disgorge. Like him, however, they refuse to be too precise as to methods (page 237); they are certain only that there must be some confiscation to save the middle classes. The kernel of their nebulosity seems to be that capitalism is to be supplanted by "associated industry,"—a happy combination of sublimated communal anarchy, profit-sharing, attenuated state socialism and the police constable. The volume is an interesting and eloquent testimony to the fact that socialism—state and democratic—is to find plenty of foes among radicals, and it may be that the conservatives will prefer their old enemy to their new friends.

Professor Frank Parson's *Legal Doctrine and Social Progress* (New York, B. W. Huebsch, 1911; 219 pp.) is a brief summary of the legal theories that justify those measures of reform (which may justly be deemed socialistic) to whose advocacy the author gave so many full years of labor and sacrifice. It is, therefore, not a treatise, but a declaration of faith and an argument. Professor Parsons believes that a very large proportion of our judicial decisions were determined by the personal and class bias of the judges, and he looks upon direct democracy and a wide extension of governmental activities as promising a fairer ideal of distributive justice. Nevertheless, he does not hold that the law is hopelessly reactionary. "Accepted legal doctrine is, on the whole," he says, "as radical as human nature will stand for. There is nothing in the fundamentals of the law to prevent progress, or to impede the development of the highest and noblest social institutions." The new order which he prophesies is to be very largely the application of old principles to new conditions.

It is interesting to notice that a second edition of Professor L. A.

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Oppenheim's brochure on *The Panama Canal Conflict Between Great Britain and the United States* (Cambridge University Press, 1913; 57 pp.) has become necessary. Only slight changes are made in the new edition. It is to be hoped that in preparing the third edition, which in all probability will be required, Professor Oppenheim will consider the diplomatic interchanges that have been made since the tolls provision first became a matter of controversy.

Professor John MacCunn's *Political Philosophy of Burke* (New York, Longmans, Green & Co., 1913; vi, 272 pp.) is a brief, clear and sober analysis of that great Whig's doctrines. It is sympathetic in spirit, but not laudatory or unduly oblivious to well-recognized faults. The author treats the subject topically, under such heads as theories and theorists, prudence, the people, conservatism, ancestral wisdom, government, rights and democracy, and endeavors to present the essence of Burke's views on these several matters. Underlying it all is the thesis that Burke's conservatism was a conservatism of principles, not of sentiment or prejudice (page 68), and it is with this concept rather than with the marshalling of extracts that we may fairly quarrel. Everyone likes to elevate his sentiments to the dignity of "principles" discovered in the nature of things, but Professor MacCunn's theory would make Burke too much of an abstraction. In his private letters that eminent Whig nearly always fell into a choleric passion whenever he had occasion to speak of the "black-hearted" advocates of French doctrines, and his speech on Hastings shows a virulence and an unreasoning bitterness which remind us that he too partook of the frailties of human nature.

In the well-known "Heroes of the Nations" series, each biography is intended to cover some important national period or movement; and Dr. Ernest F. Henderson's *Blücher and the Uprising of Prussia Against Napoleon* (New York, G. P. Putnam's Sons, 1911; xix, 347 pp.) is fairly to be judged from the point of view suggested by the subtitle. Of all the men prominently connected with Prussian history between 1806 and 1815 Blücher is the one who would generally be acclaimed a "hero;" but of them all he had the least to do with the regeneration of Prussia in preparation for the uprising against Napoleon. Stein, Hardenberg, Humboldt, Scharnhorst, Fichte, Schleiermacher, Boyen, Grolmann and Gneisenau were the men who forged the nation into a flaming sword of vengeance, and Blücher, with Gneisenau directing him as his chief of staff, was called upon to wield it during the Wars of Liberation. As Blücher himself said: "Gneisenau lenkt und ich gehe vorwärts." Blücher played his part well; but if his biography

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is to serve any distinct purpose as history, it must be chiefly a history of the campaigns between 1813 and 1815. Sixty pages accordingly carry the reader to 1812, and a short paragraph covers the last years of Blücher's life, from 1815 to 1819. This distribution of space is in itself an interesting comment on Blücher's lack of connection with any thing in Prussian history except battles. These are not to be neglected —least of all in Prussian history—and they may be found fully described with excellent maps in the remaining 260 pages of Dr. Henderson's biography. Of the larger phases of Prussian history and policy in the period no adequate account has been attempted, nor do the brief comments show any thorough comprehension of the problems involved. An appendix of folk-songs of the period bears no vital relation to the purpose of the book.

That social and industrial history can be made as interesting as are chronicles of war and of the activities of kings is attested by George Guest's little volume entitled *A Social History of England* (London, G. Bell and Sons, Ltd., 1913; xi, 209 pp.). To compress within the limits of 188 pages the social history of England from prehistoric times down to the present day is of course no small task. To do this in language that children can understand and at the same time to present all of the main elements faithfully and intelligibly is a real achievement. Mr. Guest, who is himself a schoolmaster, can boast of this achievement. He intends his book for use in the secondary schools. It ought speedily to find a place in every school where history of the new variety is being taught.

The *Collection de Documents inédits sur l' histoire économique de la Révolution française* (see volume xxvi, p. 560, of this magazine) continues its slow but impressive growth. Among the volumes recently published, six are devoted to the *cahiers* of 1789. These are: volumes iii (1911) and iv (1912) relating to the *sénéchaussée* of Rennes, edited by MM. Sée and Lesort; volumes ii (1910) and iii (1911) relating to the *bailliages* of Troyes and Bar-sur-Seine, edited by M. J. J. Vernier; volumes iii (1911) relating to the *bailliages* of Sezanne and Châtillon-sur-Mare, edited by M. Gustave Laurent; and volume ii (1912) relating to the *bailliages* of the généralités of Metz and Nancy, edited by Charles Etienne. Something of the diligence of the editors may be gathered from the fact that M. Laurent provides a preface half as long as the text itself, including a study of the economic condition of the district, which is based upon the most painstaking research and extends to more than a hundred pages; or that M. Vernier gives, in his third volume, an exceedingly useful analysis of the *cahiers*, grouping

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the complaints under various heads, such as justice, taxation, manorial rights. Considering how imperfect is the earlier collection of the *cahiers* and how unsafe the commentaries based upon it, students will turn to the conclusions of the editors with peculiar interest. In one respect, however, these conclusions must be treated with reserve. There is too ready a disposition to picture the circumstances of the peasants in somber colors. "The people suffered cruelly," says M. Vernier. ". . . was anything more needed to reduce them to the most abject misery and to force from them this cry of suffering which all the *cahiers* echo?" Such views form part of the radical republican creed. It would be heresy to acknowledge that the French peasant enjoyed material comforts and had aspirations quite outside the experience of the German serf. Six other volumes are concerned with the sale of national property. These are: volume iv (1911) relating to the department of the Bouches-du-Rhône, edited by M. Paul Moulin; volume i (1911) and ii (1912) relating to the department of the Gironde, edited by MM. Marion, Benzacar and Caudrillier; volume i (1912) relating to the district of Sens, edited by Charles Porée; a volume (1911) relating to the department of the Vosges, edited by M. Léon Schwab; and a volume (1911) relating to the districts of Rennes and Bain, edited by MM. Guillou and Repillon. The accurate data which is now presented will make it possible to reach a settled decision on some important points. It appears that the middle class participated chiefly in the earlier sales; the peasants, in the later. There were 540 purchasers for the 1154 lots sold in the districts of Rennes and Bain. "Property had been divided and dispersed by the Revolution since very few citizens had bought more than one lot and since most of those buying several had done so for the purpose of reuniting parcels of land which had been divided for the convenience of the auction." It does not appear that the government made any great financial profit in the end. As the editors say with respect to the Gironde: "The *assignat* only too greatly encouraged the sale of national property. It encouraged it to the point of permitting payment with almost nothing and made the state lose almost the whole value." M. Félix Mourlot has brought out volume iii (1910) of the economic documents drawn from the municipal registers of the district of Alençon. MM. Bloch and Tuetey have published (1911) the proceedings and reports of the committee on poverty which was appointed by the National Assembly in 1790 and which occupied itself for over a year with the problem of relieving indigence and with the improvement of prisons and houses of detention. M. Adher's volume (1912) on

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Le Comité des subsistances de Toulouse shows how that city of 60,000 met the forestallers of grain by purchasing directly and establishing municipal stores. This was in the years 1793–1795, when army requisitions had drawn off much grain and when commerce and manufacture were stagnant. The functions of the committee extended to the finding of employment for the poor. Somewhat similar ground is covered in volume i (1911) of M. Lorain's *Les subsistance en céréales dans le district de Chaumont* (1788–1796).

Colonial Opposition to Imperial Authority during the French and Indian War (Berkeley, The University Press, 1911; 98 pp.) is the title of a study by Professor Eugene Irving McCormac, which appears as the initial number of the University of California Publications in History. The author shows the importance of the period 1754–1763 as preliminary to the Revolution.

> Hardly an issue which disturbed the relations between colonies and mother country between the passage of the Stamp Act and the Declaration of Independence was new. . . . The grounds upon which the colonists claimed exemption from British taxation and restrictions in the later period were by no means new; they had been asserted again and again in substantially the same terms during the war with France.

He shows how officials both in England and America were convinced of the need of reorganizing the colonial system, particularly in respect to defense. The greater part of this study is devoted to an examination of the activities of the several colonial assemblies in connection with the war. The author's conclusion is that the colonial administrative system of England was "inadequate and impotent." The one remedy that commended itself to British officialdom was parliamentary control with parliamentary taxation to support it. The attempt to apply this remedy led to the revolt of the colonies. Mr. Beer has shown the importance of the period here dealt with in the history of British colonial policy; Mr. McCormac, taking his stand on American soil, shows its connection with the Revolution.

Many writers of history shun the field of recent events from fear that lack of perspective makes it difficult if not impossible to present the picture accurately and without distortion. In spite of this widely entertained apprehension, Dr. Paul Leland Haworth has ventured in his *Reconstruction and Union* (New York, Henry Holt and Company, 1912; 255 pp.) to tell the story of the United States from the close of the Civil War through the elections of 1910. The author has the merit or demerit of possessing a point of view. From the titles of his

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two concluding chapters, one might hazard a guess as to how he voted, or at any rate how he did not vote, in the presidential election subsequent to the period of his narrative. Chapter viii, which deals with the years of President McKinley's administration following the war with Spain, is entitled "The Golden Age of Materialism." After referring to the passage of the Dingley Tariff Bill in the House of Representatives "through the splendid discipline of the Republicans and under the fostering care of Thomas B. Reed, who was again Czar," the author adds: "Modifications in the further interests of the powers that ruled were made in the more plutocratic Senate. . . . There can be no doubt that the act tended to put American consumers at the mercy of monopolies by rendering foreign competition almost impossible, but that was exactly what many of the framers of the act desired." Of President McKinley he says, after referring to his private virtues: "Yet he was not truly democratic nor did he guard carefully the true interests of democracy. His complaisance towards men of wealth and interests representing wealth and the influence exerted over him by the corruptionist Hanna form blots that time will hardly efface." The period which follows Mr. McKinley's assassination is dealt with in Chapter ix under the title of "The Revolt Against Plutocracy." Throughout the volume the story is racily told; significant events are brought to the foreground and graphically portrayed. It is an entertaining book. Limits of space may account for the fact that assertions are too seldom buttressed by evidence, but can hardly excuse the assurance with which many of the assertions are made. The book does not entirely dismiss the apprehension that the writing of recent history is a dangerous thing.

Of interest to Americans as a political record of ten years of federal government in the antipodes is *The First Decade of the Australian Commonwealth* (Melbourne, Mason, Firth and M'Cutcheon, 1911; xv 320 pp.). It is a purely parliamentary history that the author, Mr. Henry Gyles Turner, has written, and it deals extensively with parties and ministries, of which latter the infant commonwealth has had no dearth. As one whose theme is the very recent history of his own country, the writer, of course, makes no claim for the finality of his opinions; indeed he modestly places himself among the "hodmen" of literature whose work may not be without value to the philosophic historian. It requires no great discernment to discover that the author is wholly out of sympathy with and deeply distrustful of the Labor Party, which at present appears to control the destinies of Australia. Evidences of inexperience or ignorance or class spirit on the part of

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Labor members are presented with ill-concealed satisfaction. The member of Parliament for whose judgments and utterances Mr. Turner has most respect is Mr. Bruce Smith of New South Wales, whose views on social and industrial questions the Labor Party regards as highly reactionary.

Now and then every student of politics and economics feels the need for what are described in newspaper parlance as "trigger-books." A book of this kind is *The New International Year-Book*, whose volume for 1912 (New York, Dodd, Mead and Company, 1913; 822 pp.) appeared several months ago. The promptness with which its material is made available is usually urged as the chief asset of this publication; but at the same time its articles are reliable and back volumes are not consigned to the waste basket. Considering the scope of the work the treatment of the individual topics is surprisingly comprehensive.

The literature of socialism grows apace in the United States. Recently three volumes well worth perusal have been put forth by socialist writers of established reputation. Two of the books, Morris Hillquit's *Socialism Summed Up* (New York, The H. K. Fly Company, 1913; 110 pp.) and Allen Benson's *The Truth About Socialism* (New York, B. N. Huebsch, 1913; 188 pp.) endeavor to set forth clearly and pointedly what the socialist movement in this country really represents and what it has already accomplished. Mr. Benson writes with more spirit than does Mr. Hillquit, and his book radiates more heat, but Mr. Hillquit's work is more unified and reflects a calmer temperament and a saner judgment. The third book, Mr. William English Walling's *The Larger Aspects of Socialism* (New York, The Macmillan Company, 1913; xxi, 406 pp.), is an ambitious attempt to set forth some of the larger philosophical implications of socialism. To many persons the theories and the ideals of socialism make a strong intellectual and spiritual appeal; and to these Mr. Walling's book will prove deeply interesting. And those who are sceptics, if they have a taste for abstract thought, will relish the opportunity to test Mr. Walling's philosophical interpretations. The scope of his undertaking is too wide to permit any reference here to details, but Mr. Walling's main thesis can, perhaps, be briefly set forth. This thesis is in short that the whole philosophy of modern science is "socialistic in its bearings" and that in many directions the ultimate goal of modern thought seems to be the same as that toward which the socialist movement itself is going. Mr. Walling's new book is a companion volume to his *Socialism As It Is*, which dealt with the purely practical aspects of the socialist movement. He now enters upon a more difficult field—but with equal success.

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Twenty years ago Mr. H. T. Hobhouse wrote a little volume entitled *The Labor Movement*. Recently a completely revised edition was published (New York, The Macmillan Company, 1912; 159 pp.) from which it appears that lapse of time has but confirmed Mr. Hobhouse's faith in his original analysis. He still believes that the solution of the problem is not to be found in any one of the various remedies proposed. "The truth is . . . that trade unionism, coöperation and state and municipal socialism have in essentials one and the same end to serve. Far from being alternative or incompatible methods, each is, I believe, the necessary supplement to the others in the fulfilment of the common purpose. . . ." [page 13]. His suggestion concerning syndicalism is interesting. He says: "Indeed the present syndicalist movement, wild in many of its expressions and incoherent as a substantial plan as it may be, becomes intelligible as a protest of despair against bureaucratic socialism and the cumbersome slowness of the parliamentary machine." The need of the day is still as it was twenty years ago to appreciate the right relations between "voluntary associations like trade unions and the collective action of the state, to decide the true function of each and to distinguish what they can and cannot do to bring about more human, more equitable and more harmonious relations in the economic world" [pages 4, 5].

Among the excellent studies published by the Survey Associates, publishers for the Russell Sage Foundation, none is more interesting than those which deal with the different industries in which arise the problems of home work and of the labor of women and children. Two of these studies, both by Mary Van Kleeck, have recently become available. In *Artificial Flower Makers* (New York, 1913; xix, 261 pp.) the author, interested particularly in the question of women's work, gives a description of the organization and general conditions of the trade from the worker's point of view. She discusses the workers in the shops and in the home, telling something of their training, their conditions of living *etc.* She describes how the trade is carried on in Paris and explains to what extent legal protection is thrown around the worker here. Scattered through the book are many telling photographs. On the whole the book is an effective contribution to the literature, whose purpose is to set forth "how the other half lives."

In *Women in the Book-binding Trade* (New York, 1913; xx, 270 pp.) is to be found another convincing argument in favor of a careful governmental regulation of women's work. Here too Miss Van Kleeck presents the results of a first-hand study. The general organization of the trade is described, but chief attention is paid to the work of the

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women—the teaching of the trade, the hours of labor, legal protection, collective bargaining, home conditions *etc.* In too many directions Miss Van Kleeck finds conditions far from satisfactory. More thoroughgoing organization and more careful public supervision are the remedies needed. With more and more studies of the kind here noted becoming available there is sound basis for the hope that ultimately public opinion will be educated to the point where the fatuous stupidity of some of our present industrial arrangements will be recognized.

Mr. I. G. Gibbon, who is favorably known as the author of *Unemployment Insurance* has recently put out an interesting and valuable study on *Medical Benefit in Germany and Denmark* (London, P. S. King and Son, 1912; xv, 296 pp.). The book is simply a forerunner of a broader comparative treatment of the whole scheme of insurance as applied in Germany and Denmark. These two countries were chosen because in Germany social insurance is compulsory while in Denmark it is voluntary. Mr. Gibbon's aim has been not to arrive at some general conclusion as to the relative merits of the voluntary and the compulsory systems, but rather to set forth how the practical problems of administration were worked out under the two systems respectively. The suggestions that he makes are applicable for the most part to either kind of system. It is to be hoped that nothing will interfere with the speedy publication of the other volumes that Mr. Gibbon has planned.

It has often been pointed out that conservation of soil fertility is the most important aspect of the general problem of the conservation of natural resources. Usually, however, the outlook has been depicted as a discouraging rather than as a hopeful one. It is comforting therefore to have a volume like F. I. Anderson's *The Farmer of To-Morrow* (New York, The Macmillan Company, 1913; 308 pp.) which, after outlining the problem, indicates in a buoyant and hopeful spirit the prospects of its solution. The author shows that scarcely one-third of the land in America is now employed for the raising of food and gives reasons for the conclusion that when we really begin to cultivate the soil as the oriental farmer practices the art the problem of securing a sufficient food supply need cause us no anxiety. In the meantime, however, we must learn how to do it.

In the field of medicine it is said that the real test of the practitioner appears in the ability to make a diagnosis. After a correct diagnosis has been made, the prescribing of the proper remedy demands relatively less scientific knowledge and judgment. Somewhat the same

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thing is true in ministering to the ills of the body politic. We have some social diagnosticians who, like the enthusiastic practitioner with one idea, find that all our social ills are due to the one particular weakness upon which they have centered their attention and who concoct a social program accordingly. Others are like the quack who exploits a particular remedy from motives of personal gain. But there are still others who like the painstaking practitioner make a thorough examination and analysis of all the symptoms. They realize the possibility of the presence and of the activity of numerous contributing causes and they lay out a broad program of social reform which aims to cure them all. Such a diagnosis is to be found in Frank Koester's *The Price of Inefficiency* (New York, Sturgis and Walton, 1913; xxiv, 439 pp.). Mr. Koester is an electrical engineer who has studied and written about big things. In the book under review he gives twenty-five chapters of incisive criticism of modern society from the viewpoint of the practical engineer who has time and thought for idealism. He ranges over the whole field of social relations—political, economic, educational, domestic—and touches on most of the problems arising in each. At the end of his diagnosis he prescribes remedies—education and efficiency. The material in the book is so comprehensive that brief characterization is out of the question. Suffice it to say that the whole is well worth reading. In spite of some traces of personal bias and of many statements that are open to contradiction, it is of distinct value to find the social body subjected to so thorough an examination.

Professor C. A. Pigou, of Cambridge University, presents a thoughtful and impressive study in his *Wealth and Welfare* (London, Macmillan and Company, 1912; xxi, 493 pp.). The central theme is the causes affecting the magnitude of the national dividend, and the effects, in particular, on the size of the dividend, of efforts to alter its distribution in behalf of the poorer elements in society. The general method of analysis is that of the school of Alfred Marshall, though Professor Pigou is far from being a mere member of a school. There is much unnecessary use of mathematical machinery for the elaborate demonstration of propositions that would be accepted without demonstration. There is much labor spent in developing minor exceptions to current doctrines which the original framers of those doctrines probably saw, but simply ignored as too unimportant to mention. There is no recognition of important recent developments in economic theory. In many respects, it is a belated book. But it is, none the less, a work of high importance, the product of an orderly, keen, original and scholarly mind.

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Monetary Economics, by W. W. Carlile (New York, Longmans, Green & Co., 1912; xii, 307 pp.), is a study in economic theory worth reading. The author is bad-tempered at times, particularly in dealing with the Austrians, and is often quite unjust in his interpretations. He attaches undue importance to the use of terms, seeming to feel that theories of causation and questions of terminology are inextricably interwoven. He also insists on using scientific terms in economics as the "man of the street" would use them. But his good sense rescues him from the dire consequences such a plan would involve at the hands of a more consistent writer, and he makes many real contributions, chiefly critical and on points of detail. The utility theory of value, and the quantity theory of money are both acutely criticized.

M. Aug. Arnaune's *La Monnaie, le Crédit et le Change* (Paris, Félix Alcan, 1913; xii, 564 pp.) has enjoyed such continued popularity that a fifth edition has become necessary. The new edition is enlarged and has been brought down to date. As in the earlier editions the descriptive and historical parts of the book are of outstanding excellence.

Speculation in general and the organized speculative markets in particular are perennial targets for demagogic politicians and for sensational newsmongers. The stock exchange in particular has been subjected not only to temperate criticism but also to abuse and vilification. For a good many years the members of the exchange bore these irritating attacks with what composure they could command. Hostile legislation was fought and its enactment was for the most part prevented, but no effort was made to explain to the general public the real and important economic function which the stock-exchange fulfills. Moreover, when the representatives of the exchange have been called upon to justify their institution before legislative investigating committees or similar governmental authorities, they have at times presented a sorry spectacle. The most recent exhibition of this kind was that before the Pujo committee. Indeed the professional economists have been in the main the only writers to set forth with any clarity the economic function of the stock exchange and similar markets, and they alone have attempted, therefore, to shield these institutions against indiscriminate abuse. But at last there has arisen among brokers one who is a student of something more than corporation reports and security values. Thanks to him, the stock exchange is now likely to be a little better understood. In *The Stock Exchange From Within* (New York, Doubleday, Page and Company, 1913; 459 pp.) Mr. W. C. Van Antwerp presents a spirited, yet temperate and good-natured defense of the tailed and horned representative of "Wall Street." He gives

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an explanation of the business of the exchange with the purpose of showing its broad significance. To this he adds interesting items of history and descriptions of some of the foreign exchanges. Mr. Van Antwerp, while expressly disclaiming any literary skill, nevertheless supplies evidences of a literary talent of no mean order. Moreover, he has selected his authorities with discretion and his material with judgment. In short, while betraying here and there a natural bias, he has produced an unusually good book, which may be commended not only to the general public but particularly to Mr. Van Antwerp's colleagues on the "floor."

The heavy burden of armaments in Europe has aroused considerable discussion of the subject of the best fiscal policy to be pursued in raising the sinews of war. In *Kriegssteuer oder Kriegsanleihe* (Tübingen, J. C. B. Mohr, 1912; 65 pp.) Heinrich Dietzel argues that the usual assumption that a policy of taxation is necessarily better than a policy of borrowing is not sound. His contention is that heavy taxation causes a great shrinkage of home consumption, and that this in turn seriously upsets production. The effect of a loan policy on the other hand is to stimulate production. The treatment is too brief, however, to permit one to say that Mr. Dietzel has established his point.

A series of conferences at the *École des Hautes Études Sociales* brought out a series of addresses which are printed under the title *La Concentration des entreprises industrielles et commerciales* (Paris, Félix Alcan, 1913; 270 pp.). As in most similar collections, the essays are of uneven merit, and some of them have nothing to do with their nominal subject. The others indicate clearly the concentration that is going forward in some, but not in all lines of business, and try to indicate the causes that bring about centralization.

In *What to Read on Business* (New York, Business Book Bureau, 1912; xiii, 169 pp.), we have the most complete and satisfactory bibliography of books dealing with commercial work that has yet appeared. The volume is divided into three main divisions: general, finance and accounting, which are in turn subdivided into several topics. Each title is followed by a brief description or comment, and the bibliography is indexed by both title and author.

Lawrence Chamberlain's *Principles of Bond Investment* (New York, Henry Holt and Company, 1911; v, 551 pp.) is a valuable contribution to the steadily increasing volume of literature upon the subject of investments. It is a bulky volume, divided into four parts dealing respectively with the channels of investment, civil loans, corporation loans and mathematics of bond prices. Though it might be in-

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ferred from the scope of the work that every class of bond securities is given consideration, a few exceptions are indicated by the author. But these exceptions do not incline one to criticize the book on the ground that it is not sufficiently inclusive. In fact it is so encyclopædic in character that its chief value is as a work of reference. It is not well adapted for text-book purposes. Here and there the book gives one the impression of being padded. This is due to the introduction of matter which if not exactly irrelevant is certainly far from important, and also to what seems to be unnecessary expansion of relatively minor points. On the other hand, the volume has many merits which more than counterbalance its defects. The author's treatment is careful and painstaking. The advantages and disadvantages of particular types of securities are weighed and estimated with a thoroughness that leaves little to be desired. It is safe to say that in no other work can one find so complete and careful a guide to bond investment.

The same author's *The Work of the Bond House* (New York, Moody Publishing Company, 1912; iv, 157 pp.), although written in a rather popular vein, contains a considerable amount of valuable and interesting information. It discusses the advisory, the protective and the banking functions of the bond houses, the various aspects of the purchase of municipal, railroad and corporation bonds and the viewpoints of the banker and of the investor in the selling of bonds.

Another recent volume, dealing with business management in a popular style is Charles De Lano Hine's *Modern Organization* (New York, Engineering Magazine, 1912; vi, 110 pp.), in which the author presents an exposition of the "unit system" employed on the Harriman Lines. The principal characteristic of the system, if it can be called a system, is the elimination of the distinctive titles of general superintendent, superintendent of motive power, chief engineer *etc.*, by the appointment of each of these officers to the position of assistant general manager. In like manner the master mechanic, division engineer, trainmaster *etc.* are appointed assistant superintendents. The idea involved in this change is to give a more generalized responsibility to the higher officials instead of a specialized responsibility exercised by each in the performance of his particular function. The first three chapters are important and valuable; the others much less so.

The subtitle of the three-volume work *Business of Insurance* (New York, Ronald Press, 1912; xvi, 150 pp.), compiled and edited by Howard P. Dunham, indicates that the work is designed as a text book. But it is far from likely that it will ever serve such a purpose. Although the volumes are supposed to cover all lines of insurance, the

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treatment of marine insurance is entirely inadequate as is also that of title and credit insurance and of corporate suretyship. These subjects are dealt with in a few dozen pages in a work of three volumes. The work is not scientific and gives a most inadequate idea of the insurance business. To cite but a single instance, the group of articles upon fire insurance contains practically nothing upon such important subjects as schedule rating and contribution. The books have, however, several good features, not the least of which is the bibliography following many of the articles. Several of the individual articles themselves are of considerable value, because they deal with phases of the subject upon which there is little available material.

The third edition of Henry Moirs' *Life Assurance Primer* (New York, Spectator Company, 1912; vi, 230 pp.) has been thoroughly revised and brought up to date by its author. At the end of each chapter in this latest edition, the author has appended a list of questions and has thereby rendered the work more satisfactory for text-book purposes.

Mr. Charles M. Hoyt's *Scientific Sales Management* (New Haven, Woolson and Company, 1912; viii, 204 pp.) belies its title. It is in reality but one more of the ever-increasing number of treatises on the art of selling goods. One looks in vain for an explanation and examination of methods of routing and keeping track of salesmen, salesmen's reports *etc.*, of the laying-out and organization of sales-campaigns, of branch-house *vs.* central-office selling plans and of many other points that one might expect from the title to find discussed. One meets rather with a discussion, in a somewhat popular vein, of various phases of the salesman's and salesmanager's work which are familiar to anyone who knows anything at all of selling goods. The best chapters are those on "Hiring Salesmen," "How to Conduct a Trade Promotion Department" and "Standardizing Sales Arguments."

Of an entirely different character is Paul Terry Cherington's *Advertising as a Business Force* (New York, Doubleday, Page and Company, 1913; viii, 369 pp.), a volume composed chiefly of extracts from *Printer's Ink* and *Advertising and Selling*. These extracts are admirably knit together by Mr. Cherington into sixteen chapters dealing with a large variety of problems relating to advertising and selling such as the selection of media, the advertising problems of the retailer, advertising and selling coördination, price maintenance *etc.* The book is designed to provide a text for individual instruction work for the Associated Advertising Clubs of America. Its chief value lies in

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the fact that the various problems considered therein are discussed by men who have actually met and handled them in practical business life. To some chapters there are appended lists of review and problem questions based on the chapter. It seems not too much to say that the volume is one of the best works on the subject of advertising that has thus far appeared.

"Even the best of modern civilizations," remarked Huxley nearly a quarter of a century ago, "appears to me to exhibit a condition of mankind which neither embodies any worthy ideal nor even possesses the merit of stability." Today, Huxley's contemporary, Mr. Alfred Russel Wallace, in *Social Environment and Moral Progress* (New York, Cassell and Company, 1913; 181 pp.) takes an equally disheartening view of society. Wealth, he finds, has been unjustly distributed, unsanitary cities are producing disease and premature death at an astonishing rate, millions of men are struggling in vain for bare necessities, governments do nothing to remedy these conditions, among the middle classes bribery is rampant, capitalists drive wages below the level of subsistence, our system of justice is unjust. "The social environment as a whole in relation to our possibilities and our claims is the worst that the world has ever seen." This condition of affairs Mr. Wallace attributes to our system of universal competition; the remedy he prescribes is universal coöperation. "Inheritance by the State in trust for the whole community" must be substituted for inheritance by the few; monopoly must be replaced by free access to land and to capital for all. Changes of this sort, Mr. Wallace believes, would lessen the death rate of males, give woman greater freedom in mating and thus through sexual selection produce "true" moral progress. Pessimistic in form, the entire essay, perhaps the last word from one of that famous group of evolutionists who surrounded Darwin, is a challenge to radical action.

The Social Direction of Human Evolution, by William E. Kellicott (New York, D. Appleton and Company, 1911; xii, 249 pp.), offers in brief scope an answer to the question, "What is eugenics?" In the first of the three chapters, the author traces the historical development of the idea of eugenics, defined according to Galton as "the study of the agencies under social control, that may improve or impair the racial qualities of future generations, either mentally or physically." The second chapter is devoted to showing that eugenics is founded on well established biological principles, which are stated in such a manner as to introduce, in the last chapter, the real theme of the book—human heredity and the eugenic program. The extent to

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which the Mendelian formula applies to human heredity is stated with more than usual clearness. A number of pedigree charts show the manner in which various traits are inherited. The chapter closes with a clear statement of what the eugenist hopes to accomplish and the reasons for his hopes. The author believes that much can and ought to be done and that no one who is honestly interested in the welfare of the human race can neglect to coöperate with this movement.

Readers of *Life* have long enjoyed the delightful contributions to that sparkling journal by Mr. E. S. Martin. Some of Mr. Martin's best essays have been those in the field of woman's suffrage. Some of these have been put together and are now available in book form under the title *The Unrest of Women* (New York and London, D. Appleton and Company, 1913; 146 pp.). As they now appear the essays constitute an interesting addition to the discussion of the feminist movement. The demand for the vote is regarded by Mr. Martin as only a symptom of the deeper change that is going on in the woman's world. She is revolting all along the line, and her demand for the vote is simply an expression of a broader demand for a readjustment of her entire position. She demands freedom and opportunity for self-expression to the same extent as these are now enjoyed by man. She is of course entitled to that readjustment, Mr. Martin believes, but he is inclined to regard the vote as a detriment rather than an aid in the process. But the reader is referred to the essays themselves. Mr. Martin's contribution is interesting and important, not so much because of what he says as because of the charming and graceful form in which his thought finds expression.

Dr. Peter Roberts's *The New Immigration: A Study of the Industrial and Social Life of Southeastern Europeans in America* (New York, The Macmillan Company, 1912; xxii, 386 pp.) possesses a unique value by reason of the author's long and intimate acquaintance with the life of Slavic miners in the Pennsylvania coal fields and his wider experience of late years as head of the work of the Young Men's Christian Association among immigrants. It is not well written, and most misleading statements could be culled from it by quoting passages separated from the context. It emphatically needs to be considered as a whole and interpreted in the light of its dominant purpose. Among the outstanding impressions which the book conveys the most striking are, on the one hand, the frequent brutality and indifference of employers and their agents, the too frequent contempt and apathy of the native toward the foreigner, the too widespread tendency of the latter to subsist on a low level, and, on the other hand, the devoted and in-

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telligent efforts of Americans interested in social and educational work to improve conditions and, finally, the vigorous self-help and the fine spirit among ambitious and thrifty new comers and their children.

It must have been a joy to write the biography of Samuel June Barrows, which appears under the appropriate title of *A Sunny Life* (Boston, Little, Brown and Company, 1913; xi, 323 pp.). In this charmingly written volume his gifted wife, Isabel C. Barrows, has given an intimate view of his private life and an interesting record of his public achievements. The book will not only perpetuate the memory of a man who has made important contributions to the cause of human betterment, but it will also deepen the sympathy for prison reform and stimulate the interest in international arbitration—two fields of social reform in which Mr. Barrows was vitally interested.

The scientific examination of the institutions of society which is at once the cause and the product of our social unrest has produced in the Christian church deep searchings of heart and a radical readjustment of ideals. As an indication of the scope of the process note must be taken of four books each of which though dealing with its own special theme reflects in turn the new spirit abroad in the churches of the land. The first is a study, by C. O. Gill and Gifford Pinchot, of *The Country Church* (New York, The Macmillan Company, 1913; xii, 222 pp.). The question here raised, is whether or not the country church is fulfilling its mission. By a careful intensive study of certain typical rural counties in New York and in Vermont the authors show that in the territory selected the country church is losing ground in membership and in general effectiveness. The remedies proposed embrace an improvement in country life, a reorganization of country schools, the development of a more effective ministry, closer church coöperation and the adoption of an inspiring program for social service.

The second book to which attention is called is Professor S. G. Smith's *Democracy and the Church* (New York and London, D. Appleton and Company, 1912; xv, 357 pp.). The volume is a clarion call to the Christian church to seize its opportunity. It attempts to show not only that "the life and teaching of Jesus has been the creative and uplifting force in the social life of the world for nearly two thousand years," but also that in the same life and teaching lies the hope of the democracy of the future. The realization of this hope depends upon the recognition by the church of its mission in the field of earthly human progress. According to Professor Smith the "kingdom of heaven" is not a vague abstraction referring to a happy future in the empyrean, but a definite human ideal applicable to conditions here on

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earth and well within the bounds of possibility if the Christian church rises to its duty.

Another recent work in the same field appears in P. P. Womer's *The Church and the Labor Conflict* (New York, The Macmillan Company, 1913; x, 302 pp.). This is a scholarly discussion of the shortcomings of the present economic order and of the part the church ought to play in helping to overcome them. The central thesis is that Jesus preached an ideal human society as well as an ideal individual. The author believes that for centuries the organized church has been laying emphasis on the wrong things and that the immediate duty confronting it is to ally itself with the forces making for justice rather than for peace in the social order, until a regenerated society bespeaks a closer approximation of the Christian ideal of brotherhood and good will. That the church in almost every denomination is beginning to see this duty, Mr. Womer believes is being most hopefully disclosed throughout the Christian world.

Lastly reference must be made also to *Spiritual Culture and Social Service* (New York, F. H. Revell and Company, 1912; 222 pp.), by Rev. C. S. McFarland, secretary of the Federal Council of the Churches of Christ in America. This book comprises a series of sermons delivered by the author during his former pastorate. Underlying each of the sermons is the idea that broad human helpfulness is an indispensable condition of the highest individual spiritual development. While the style is suggestive of pulpit oratory this does not mar the deep significance of the viewpoint set forth. The book is readable and stimulating, and like the other volumes referred to constitutes a noteworthy contribution to the literature on the socialization of the Christian church.

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